

# Access to justice and legal empowerment of victims of domestic violence through legal organizations in the city of Buenos Aires

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*To Graciela and Antonio*

*To Agustín*

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## **Abbreviations**

- Access General Secretariat: Access to Justice and Human Rights General Secretariat
- Am. Decl.: American Declaration of the Rights and Duties of Man
- Attorney General's Office: National Attorney General's Office
- Brasilia Regulation: Brasilia Regulation Regarding Access to Justice to Vulnerable People
- City Attorney: City Attorney General's Office
- CCPC: Code of Criminal Procedure for the City
- CEDAW: Convention on the Elimination of all Forms of Discrimination against Women
- City Contravention Code: Contravention Code for the City
- City Tribunal: Superior Tribunal of Justice for the City
- City: City of Buenos Aires
- Civil and Commercial Code: Civil and Commercial Code for the Nation
- Convention of Belém do Pará: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women
- ICC Statute: Rome Statute of the International Criminal Court
- INADI: National Institute against Discrimination, Xenophobia and Racism
- Law 24417: Law on the Protection against Family Violence
- Law 26485: Law on the Right of Women to Live Free of Violence
- Legal Organizations: State organizations created within the judicial system
- Ministry of Justice: Ministry of Justice and Human Rights of Argentina
- Ministry of Social Development: Ministerio de Desarrollo Social
- NGOs: Non-profit organizations that do not respond directly to the judicial system, the executive, or legislature
- OFAVyT: Victims and Witness Assistance Office
- OVD: Domestic Violence Office
- Pact of San José: American Convention on Human Rights
- PPO: Public Prosecutor's Office for the City
- UN: United Nations
- UNDP: United Nations Development Programme
- UOD: Unit of Orientation and Complaints
- USAID: United States Agency for International Development



## Translations

- Access to Justice and Human Rights General Secretariat: Secretaría General de Acceso a Justicia y Derechos Humanos
- Anticorruption Office: Oficina Anticorrupción
- Auditing Office: Sindicatura General
- Centre for Victim's Assistance: Centro de Atención a la Víctima
- Chief of the Cabinet of Ministers: Jefatura de Gabinete de Ministros
- City Advisor for Disabled People: Asesoría General de Incapaces
- City Attorney General's Office: Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires
- City Congress: Legislatura
- City Contravention Code created the Monitoring and Coordination Office of the Enforcement of Sanctions: Oficina Común de Coordinación y Seguimiento de Ejecución de Sanciones
- City Council of Magistrates: Consejo de la Magistratura
- City of Buenos Aires: Ciudad Autónoma de Buenos Aires
- City Public Defender: Defensoría General
- City Superior Tribunal of Justice: Tribunal Superior de Justicia
- Colombian Units of Immediate Answers: Unidades de Reacción Inmediata
- Comprehensive Centres for Women: Centro Integral de la Mujer
- Council for the Rights of Children and Adolescents: Consejo de los Derechos de Niñas, Niños y Adolescentes
- Council of Magistrates of the Nation: Consejo de la Magistratura
- Council of Strategic Planning: Consejo de Planeamiento Estratégico
- Court of Criminal Appeals: Cámara de Apelaciones del Fuero PCyF
- Criminal Code Project: Anteproyecto de Código Penal de la Nación
- Districts: Comunas
- Domestic Violence Office: Oficina de Violencia Doméstica
- Emergency neighbourhoods: Villas
- General Audit: Auditoría General
- General Budgetary Law of the Nation: Presupuesto General de la Administración Nacional
- Guide for the New Civil Servant: Guía del Ingresante

- Integral Assistance to Victims of Domestic Violence from the Ministry of Justice and Human Rights of Argentina: Atención Integral a las Víctimas de Violencia Doméstica del Ministerio de Justicia y Derechos Humanos de la Nación
- Judicial Investigation Body: Cuerpo de Investigaciones Judiciales
- Law on the Protection against Family Violence: Ley de Protección contra la Violencia Familiar
- Law on the Right of Women to Live Free of Violence: Ley de Protección Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en los Ámbitos en que Desarrollen sus Relaciones Interpersonales
- Legal Counsel to Advise in Children's Matters: Asesoría Tutelar
- Ministry for Women: Ministère des Droits des femmes
- Ministry of Justice and Human Rights of Argentina: Ministerio de Justicia y Derechos Humanos
- Ministry of Justice and Security for the City: Ministro de Justicia y Seguridad
- Ministry of Social Development: Ministerio de Desarrollo Social
- National Attorney for Administrative Investigations: Fiscal Nacional de Investigaciones Administrativas
- National Attorney General's Office: Fiscalía General de la Nación
- National Commission of Public Ethics: Comisión Nacional de Ética Pública
- National Council of Coordination of Social Policies: Consejo Nacional de Coordinación de Políticas Sociales
- National Council of Women: Consejo Nacional de la Mujer
- National Institute against Discrimination, Xenophobia and Racism: Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo
- Office of Institutional Relations: Oficina de Relaciones Institucionales
- Office of Systematization of Decisions and Internal Regulations: Oficina de Sistematización de Dictámenes y Resoluciones
- Political Criminology and Strategic Planning General Secretariat: Secretaría General de Política Criminal y Planificación Estratégica
- PPO and the Neighbours Programme: Fiscalía y los Vecinos
- Prosecution Tribunal: Jurado de Enjuiciamiento
- Protection and Support Programme: Orientación, Protección y Apoyo, Chile
- Public Defender of Minors and the Disabled: Defensoría de Menores e Incapaces
- Public Hearings: Audiencias Públicas
- Public Prosecutor's Office for the City: Ministerio Público de la Ciudad de Buenos Aires

- Public Service Regulation Body: Ente Único Regulador de los Servicios Públicos
- Reception of Complaints Office: Oficina Central Receptora de Denuncias
- Santiago Guidelines on Victim and Witness Protection: Guías de Santiago sobre Protección de Víctimas y Testigos
- State Observatory on Violence against Women: Observatorio de Violencia de Género
- Sub-secretariat for the Institutional Reform and Strengthening of Democracy: Subsecretaría para la Reforma Institucional y Fortalecimiento de la Democracia
- Unit of Centralized Administrative Procedures: Unidad de Administración Común
- Unit of Early Intervention: Unidad de Intervención Temprana
- Unit of Orientation and Complaints: Unidad de Orientación y Denuncia
- Victims and Witness Assistance Office: Oficina de Asistencia a la Víctima y Testigo
- Violent Men Programme: Hombres Violentos
- Women's Office: Oficina de la Mujer



## Table of Contents

Acknowledgements .....	v
Abbreviations .....	ix
Translations .....	xi
Table of Tables .....	xxv
Table of Figures .....	xxvii
Chapter 1 Introduction .....	1
1.1. Motivation .....	1
1.2. Justification of the Topic .....	2
1.3. Qualitative Empirical Legal Research .....	7
1.4. Research Questions .....	8
1.4.1. Sub-question on Legal Provisions .....	8
1.4.2. Sub-questions on Legal Organizations .....	8
1.4.3. Sub-questions on Individuals .....	8
1.5. Structure of this Study .....	9
Chapter 2 Theoretical Framework and Methodology .....	11
2.1. LE Framework .....	11
2.1.1. Development of the LE Framework .....	11
2.1.2. Framework for the Case Study .....	14
2.1.2.1. Legal Provisions .....	15
2.1.2.2. Legal Organizations .....	19
2.1.2.3. Individuals .....	24
2.2. Methodology .....	28
2.2.1. Sample .....	29
2.2.1.1. Theoretical Sources .....	29
2.2.1.2. Legal Sources .....	29
2.2.1.3. Empirical Sources .....	29
2.2.2. Methods .....	31
2.2.3. Data Collection .....	33
2.2.3.1. Period One (10.12.2012 – 30.01.2013) .....	33
2.2.3.2. Period Two (27.06.2013 – 15.08.2013) .....	34
2.2.3.3. Period Three (14.01.2014 – 28.02.2014) .....	36
2.2.3.4. Comparative Data .....	37
2.2.4. Data Analysis and Computer Programme .....	38
2.2.5. Validity and Reliability .....	39
2.2.6. Ethical Considerations .....	40
2.2.7. Limitations .....	41
Chapter 3 Legal Empowerment as Applied to Legal Provisions .....	43
3.1. Introduction .....	43
3.2. Overview of the Argentine Legal Framework .....	44
3.3. Right of Women to a Life Free of Discrimination and Violence .....	45



3.3.1. Enhancement .....	45
3.3.1.1. Constitutional and International .....	46
3.3.1.2. Federal .....	49
3.3.1.3. City .....	52
3.3.1.3.1. Public Prosecutor's Office .....	55
3.3.1.4. Partial Observations .....	56
3.3.2. Awareness .....	57
3.3.2.1. Constitutional and International .....	57
3.3.2.2. Federal .....	58
3.3.2.3. City .....	61
3.3.2.3.1. Public Prosecutor's Office .....	61
3.3.2.4. Partial Observations .....	61
3.3.3. Enablement .....	62
3.3.3.1. Constitutional and International .....	62
3.3.3.2. Federal .....	63
3.3.3.3. City .....	65
3.3.3.3.1. Public Prosecutor's Office .....	66
3.3.3.4. Partial Observations .....	67
3.3.4. Enforcement .....	68
3.3.4.1. Constitutional and International .....	68
3.3.4.2. Federal .....	69
3.3.4.3. City .....	71
3.3.4.3.1. Public Prosecutor's Office .....	71
3.3.4.4. Partial Observations .....	72
3.4. Right to Access to Justice .....	72
3.4.1. Enhancement .....	72
3.4.1.1. Constitutional and International .....	72
3.4.1.2. Federal .....	73
3.4.1.3. City .....	76
3.4.1.3.1. Public Prosecutor's Office .....	77
3.4.1.4. Partial Observations .....	78
3.4.2. Awareness .....	78
3.4.2.1. Constitutional and International .....	79
3.4.2.2. Federal .....	79
3.4.2.3. City .....	80
3.4.2.3.1. Public Prosecutor's Office .....	80
3.4.2.4. Partial Observations .....	81
3.4.3. Enablement .....	81
3.4.3.1. Constitutional and International .....	82
3.4.3.2. Federal .....	83
3.4.3.3. City .....	84
3.4.3.3.1. Public Prosecutor's Office .....	85
3.4.3.4. Partial Observations .....	86
3.4.4. Enforcement .....	86
3.4.4.1. Constitutional and International .....	87

3.4.4.2. Federal .....	87
3.4.4.3. City .....	89
3.4.4.3.1. Public Prosecutor's Office.....	89
3.4.4.4. Partial Observations .....	90
3.5. Right to a Remedy.....	90
3.5.1. Enhancement .....	90
3.5.1.1. Constitutional and International.....	90
3.5.1.2. Federal .....	92
3.5.1.3. City .....	96
3.5.1.3.1. Public Prosecutor's Office.....	98
3.5.1.4. Partial Observations .....	99
3.5.2. Awareness .....	99
3.5.2.1. Constitutional and International.....	99
3.5.2.2. Federal .....	100
3.5.2.3. City .....	101
3.5.2.3.1. Public Prosecutor's Office.....	102
3.5.2.4. Partial Observations .....	102
3.5.3. Enablement.....	103
3.5.3.1. Constitutional and International.....	103
3.5.3.2. Federal .....	104
3.5.3.3. City .....	105
3.5.3.3.1. Public Prosecutor's Office.....	107
3.5.3.4. Partial Observations .....	109
3.5.4. Enforcement.....	110
3.5.4.1. Constitutional and International.....	110
3.5.4.2. Federal .....	112
3.5.4.3. City .....	115
3.5.4.3.1. Public Prosecutor's Office.....	117
3.5.4.4. Partial Observations .....	117
3.6. Right to Democratic Participation.....	118
3.6.1. Enhancement .....	118
3.6.1.1. Constitutional and International.....	118
3.6.1.2. Federal .....	120
3.6.1.3. City .....	120
3.6.1.3.1. Public Prosecutor's Office.....	121
3.6.1.4. Partial Observations .....	122
3.6.2. Awareness .....	122
3.6.2.1. Constitutional and International.....	122
3.6.2.2. Federal .....	124
3.6.2.3. City .....	124
3.6.2.3.1. Public Prosecutor's Office.....	125
3.6.2.4. Partial Observations .....	126
3.6.3. Enablement.....	126
3.6.3.1. Constitutional and International.....	126
3.6.3.2. Federal .....	128

3.6.3.3. City .....	129
3.6.3.3.1. Public Prosecutor's Office .....	131
3.6.3.4. Partial Observations .....	131
3.6.4. Enforcement .....	131
3.6.4.1. Constitutional and International .....	131
3.6.4.2. Federal .....	133
3.6.4.3. City .....	133
3.6.4.3.1. Public Prosecutor's Office .....	134
3.6.4.4. Partial Observations .....	134
3.7. Concluding Observations .....	134
3.7.1. Rights Enhancement .....	134
3.7.2. Rights Awareness .....	136
3.7.3. Rights Enablement .....	137
3.7.4. Rights Enforcement .....	138
Chapter 4 Legal Empowerment as Applied to Legal Organizations .....	141
4.1. Introduction .....	141
4.2. Overview of the PPO .....	142
4.2.1. Location to Deliver Service .....	142
4.2.2. Composition of the PPO .....	144
4.3. Key Civil Servants .....	145
4.3.1. Rights Enhancement .....	145
4.3.1.1. Legal Provisions .....	146
4.3.1.2. Transition .....	147
4.3.1.3. Personification .....	148
4.3.1.4. Context .....	149
4.3.1.5. Communication .....	149
4.3.1.5.1. Internal Communication .....	149
4.3.1.5.2. External Communication .....	151
4.3.1.6. Approach to Providers .....	152
4.3.1.7. Approach to People .....	153
4.3.1.7.1. Type of Cases .....	154
4.3.1.7.2. Strategies to Access to Justice .....	155
4.3.1.7.3. Strategies to Reach a Remedy .....	159
4.3.1.7.4. Strategies to Assist Victims .....	161
4.3.1.7.5. Strategies to Improve Participation .....	164
4.3.1.8. Limitations .....	165
4.3.1.8.1. Political Will .....	165
4.3.1.8.2. Internal Communication .....	166
4.3.1.8.3. External Communication .....	166
4.3.1.8.3.a. With Other Organizations .....	166
4.3.1.8.3.b. With the Community .....	167
4.3.1.8.4. Legal Organizational Culture .....	167
4.3.1.8.5. Intrinsic Limitations .....	168
4.3.1.8.6. Coordination with the Executive .....	168
4.3.1.9. Sustainability .....	169

4.3.1.9.1. Increase of Cases.....	169
4.3.1.9.2. Dependency on a Large Budget.....	170
4.3.1.9.3. Keeping Enthusiasm of Providers .....	171
4.3.2. Rights Awareness .....	172
4.3.2.1. Generating Awareness in People.....	172
4.3.2.1.1. Channels .....	173
4.3.2.1.1.a. Metro Stations .....	173
4.3.2.1.1.b. Community-radio .....	173
4.3.2.1.1.c. Schools and Museums.....	173
4.3.2.1.1.d. Internet.....	174
4.3.2.1.1.e. Other Channels .....	175
4.3.2.1.2. Content .....	175
4.3.2.1.3. Tailor-Made Actions.....	175
4.3.2.1.4. Snowball Effect .....	176
4.3.2.2. Generating Awareness in Victims .....	176
4.3.2.3. Generating Awareness in Service Providers .....	178
4.3.3. Rights Enablement.....	178
4.3.3.1. Submission of Complaints .....	178
4.3.3.2. Delivery of Assistance.....	179
4.3.3.3. Budget .....	180
4.3.4. Rights Enforcement .....	180
4.3.4.1. Transparency and Accountability.....	181
4.3.4.2. Elimination of Obstacles.....	181
4.3.4.3. Alternative Dispute Resolution Mechanisms .....	183
4.3.5. Partial Observations .....	183
4.4. Justice Providers .....	184
4.4.1. Rights Enhancement .....	185
4.4.1.1. Approach to Domestic Violence.....	185
4.4.1.2. Rights of Victims .....	188
4.4.1.3. Type of Individuals.....	189
4.4.1.4. Legal Provisions and Court Decisions .....	189
4.4.1.5. Specialized Prosecutor Units.....	193
4.4.1.6. Challenges .....	195
4.4.2. Rights Awareness .....	197
4.4.2.1. Factors.....	197
4.4.2.2. Delivery of Information .....	197
4.4.3. Rights Enablement.....	200
4.4.3.1. Options .....	200
4.4.3.1.1. Preliminary Investigation Stage.....	201
4.4.3.1.2. Alternative Dispute Resolution Mechanisms .....	203
4.4.3.1.2.a. Mediation .....	203
4.4.3.1.2.a.i. Approach.....	203
4.4.3.1.2.a.ii. Conflict Resolution.....	204
4.4.3.1.2.a.iii. Time and Space .....	207
4.4.3.1.2.a.iv. Stereotypes .....	208

4.4.3.1.2.a.v. Self-Esteem and Empowerment.....	209
4.4.3.1.2.b. Probation.....	210
4.4.3.1.3. Trial .....	210
4.4.3.1.4. Lawyers .....	212
4.4.3.2. Role of Victims .....	213
4.4.4. Rights Enforcement .....	215
4.4.4.1. Preliminary Investigation Stage .....	215
4.4.4.2. Mediation and Probation.....	218
4.4.4.3. Will of Victims .....	219
4.4.4.4. Coordination with Other State Organizations.....	220
4.4.4.5. Transparency and Accountability.....	221
4.4.5. Partial Observations .....	222
4.5. Service Providers.....	223
4.5.1. Rights Enhancement .....	223
4.5.1.1. Domestic Violence as a Legal Problem .....	224
4.5.1.2. Contributions of the Judicial System .....	224
4.5.1.3. Assistance to Victims .....	226
4.5.1.3.1. Incorporation of OFAVyT.....	226
4.5.1.3.2. Profession of Service Provider.....	228
4.5.1.3.3. Challenges.....	228
4.5.1.3.3.a. Length.....	228
4.5.1.3.3.b. Communication and Coordination.....	229
4.5.1.3.3.c. Approach to Assistance .....	230
4.5.1.3.3.d. Characteristics of Victims .....	231
4.5.1.3.3.e. Legal Organizational Design.....	231
4.5.1.3.3.f. Legal Provisions .....	232
4.5.2. Rights Awareness .....	232
4.5.2.1. Victims Awareness of Rights .....	232
4.5.2.2. Tool for Empowerment .....	233
4.5.3. Rights Enablement.....	235
4.5.3.1. OFAVyT.....	235
4.5.3.2. Meetings.....	237
4.5.3.3. Characteristics of Victims .....	239
4.5.3.3.1. Sense of Responsibilities .....	239
4.5.3.3.2. Perception of Personal Capacity.....	240
4.5.3.3.3. Individualities.....	241
4.5.3.4. Conflict Resolution.....	242
4.5.3.5. Collaboration with State Organizations and NGOs .....	243
4.5.3.6. Bureaucratic Barriers .....	244
4.5.3.7. Trust .....	245
4.5.3.7.1. Trust in Legal Organizations.....	245
4.5.3.7.2. Trust in the Performance of OFAVyT.....	246
4.5.4. Rights Enforcement .....	246
4.5.5. Partial Observations .....	248
4.6. Concluding Observations .....	248

4.6.1. Rights Enhancement .....	249
4.6.2. Rights Awareness .....	252
4.6.3. Rights Enablement.....	253
4.6.4. Rights Enforcement .....	256
Chapter 5 Legal Empowerment as Applied to Individuals .....	259
5.1. Introduction .....	259
5.2. An Overview of Victims .....	259
5.2.1. Residence and Place of Birth .....	260
5.2.2. Gender and Age.....	260
5.2.3. Education.....	261
5.2.4. Work and Income.....	261
5.2.5. Household .....	262
5.2.6. Children.....	263
5.2.7. Type of Problem.....	263
5.2.8. Solution Sought.....	264
5.2.9. Trust in a Solution.....	265
5.2.10. Trust in their Own Capacity to Act.....	265
5.3. Rights Enhancement.....	266
5.3.1. What Victims Want.....	267
5.3.1.1. “What I want is ...” .....	267
5.3.1.2. “What I have is ...” .....	268
5.3.1.3. “What I fear is ...” .....	269
5.3.1.4. “What I am Capable of Doing is ...” .....	270
5.3.1.5. A Note on How Victims Present their Argument .....	271
5.3.2. Motivations to Act.....	272
5.3.2.1. Last Drop that Made the Glass Overflow .....	272
5.3.2.2. Well-being of Children.....	273
5.3.2.3. Last Resort .....	275
5.3.2.4. Limit .....	275
5.3.2.5. Type of Abuse.....	275
5.3.2.6. Trust in the Judicial System .....	275
5.3.3. Objectives .....	275
5.3.3.1. He Has to Do .....	276
5.3.3.2. Judicial System Has to Do .....	276
5.3.3.3. I Have to Do .....	277
5.3.3.4. I Do Not Desire .....	278
5.3.4. What Victims Expect .....	279
5.3.5. Perceptions of their Role .....	279
5.3.5.1. Approaches to the Different Categories .....	280
5.3.5.1.1 Themselves.....	280
5.3.5.1.2. Themselves and .....	280
5.3.5.1.2.a. ...the Accused.....	280
5.3.5.1.2.b. ... the Accused and the Judicial System .....	281
5.3.5.1.2.c. ... the Judicial System .....	281
5.3.5.1.2.d. ... the Lawyer.....	282

5.3.5.1.2.e. ... the Accused and Politicians.....	282
5.3.5.1.3. Judicial System .....	282
5.3.5.1.4. Judicial System and .....	283
5.3.5.1.5. The Accused.....	283
5.3.5.1.6. The Way Policies are Designed.....	284
5.3.5.2. How Victims Include Themselves .....	284
5.3.5.3. Changes from First to Second Interviews .....	285
5.3.6. Development of Individual Strategies .....	286
5.3.7. Participation in the Policy Process .....	288
5.4. Rights Awareness .....	289
5.4.1. Resources .....	290
5.4.2. Options .....	290
5.4.3. Legal Procedure .....	292
5.4.4. Legal Terminology .....	294
5.4.4.1. Written Notifications .....	295
5.4.4.2. Brochures .....	296
5.4.5. Understanding Rights during First Interviews .....	296
5.4.5.1. OVD.....	300
5.4.5.2. OFAVyT.....	301
5.4.5.3. Police Station.....	303
5.4.5.4. Civil Courts .....	303
5.4.6. Understanding Rights during Second Interviews.....	304
5.4.7. Cultural Components .....	306
5.4.8. The Media.....	308
5.4.9. Social Network.....	308
5.4.10. Rights Awareness as a Process .....	309
5.4.10.1. Before Submission of Complaints .....	309
5.4.10.2. During the Process .....	310
5.5. Rights Enablement.....	310
5.5.1. Resources to Access State Organizations .....	311
5.5.2. Choosing Resources .....	314
5.5.3. Characteristics of Resources .....	315
5.5.3.1. Police Station.....	315
5.5.3.2. Lawyers .....	317
5.5.3.3. Psychologists .....	320
5.5.3.4. Multidisciplinary Assistance .....	321
5.5.3.5. Support Provided by Others .....	323
5.5.3.6. Spiritual Activities .....	324
5.5.4. Relation with State Organizations .....	325
5.5.4.1. Assistance.....	325
5.5.4.2. Communication .....	327
5.5.4.3. Multiple Problems.....	329
5.5.4.4. Multiple State Organizations .....	330
5.5.5. Legal Procedure .....	330
5.5.5.1. Criminal Complaints.....	330

5.5.5.2. Mediation.....	331
5.5.5.3. Trial and “the Judge” .....	335
5.5.6. Consequences of the Complaints.....	336
5.5.7. Obstacle Encountered by Victims .....	339
5.5.8. Effects of Complaints on the Accused.....	340
5.5.8.1. General Perceptions .....	340
5.5.8.2. Categories of Perceptions .....	342
5.6. Rights Enforcement.....	343
5.6.1. Problems and Measures .....	343
5.6.1.1. Criminal Complaints and Problems of Victims .....	343
5.6.1.2. Problems of Victims Solved .....	345
5.6.1.3. Measures .....	346
5.6.2. Obstacles to Respond to Judicial Requests .....	346
5.6.2.1. Employment .....	347
5.6.2.2. Time.....	348
5.6.2.3. Family Obligations .....	350
5.6.2.4. Money.....	351
5.6.2.5. Type of Assistance .....	351
5.6.2.6. Notifying the Accused .....	352
5.6.3. Accountability .....	352
5.7. Concluding Observations .....	352
5.7.1. Rights Enhancement .....	352
5.7.2. Rights Awareness .....	354
5.7.3. Rights Enablement.....	356
5.7.4. Rights Enforcement .....	359
Chapter 6 Closing Statements .....	361
6.1. Presentation.....	361
6.2. Summary and Reflections .....	362
6.2.1. Recognition of a Gender Policy Problem .....	362
6.2.2. Legal Empowerment as a Process .....	363
6.2.3. Access to Justice as a Tool for Change .....	364
6.2.3.1. Alerting about Legal Empowerment .....	365
6.2.3.2. Participation in an Operational Path.....	366
6.2.3.3. Quality of Assistance.....	368
6.2.3.4. Calling for Synergy of Efforts.....	371
6.2.3.5. Enforcement as a Goal .....	371
6.2.3.6. Diverse Solutions .....	372
6.2.3.7. Professional Training .....	374
6.2.3.8. Change in Paradigm.....	375
6.2.4. Victims as Part of the Judicial System .....	375
6.2.4.1. Multiple Perceptions.....	375
6.2.4.2. Culture and Finances.....	378
6.2.5. Engaging in the Policy Process.....	379
6.2.6. Active and Collective Role.....	380
6.3. Recommendations.....	381



6.4. Areas of Further Research .....	384
6.4.1. Enhancing Rights Awareness and Capacities.....	385
6.4.2. Communication and Cooperation.....	385
6.4.3. Policy Evaluation .....	385
6.4.4. Regional Surveys.....	386
6.5. Final Words .....	386
Annexes.....	389
Annex 1. Matrix for Legal Provisions .....	389
Annex 2. Matrix for Legal Organizations .....	392
Annex 3. Matrix for Individuals .....	395
Annex 4. Thematic Interview Guide for Key Civil Servants .....	396
Annex 5. Thematic Interview Guide for Justice Providers.....	397
Annex 6. Online Interview to Service Providers of OFAVyT.....	398
Annex 7. Questionnaire for Victims <sup>8</sup> .....	406
Annex 8. Interview Guide for First Interview with Victims <sup>9</sup> .....	410
Annex 9. Interview Guide for Second Interview with Victims <sup>11</sup> .....	411
Annex 10. Effects of Criminal Complaints on the Accused <sup>2</sup> .....	416
Annex 11. Measures and Problems in the Eyes of Victims and in the Eyes of the PPO.....	426
Valorization Addendum.....	441
List of References.....	445
English Summary .....	477
Dutch Summary / Nederlandse samenvatting .....	481
Spanish Summary / Resumen en español.....	485
Curriculum Vitae .....	489

## Table of Tables

Table 1. LE Framework .....	15
Table 2. LE Framework as Applied to Legal Provisions .....	16
Table 3. Theoretical Expectations Chapter 3 .....	19
Table 4. Classification of Organizations .....	20
Table 5. LE Framework as Applied to Legal Organizations .....	21
Table 6. Theoretical Expectations Chapter 4 .....	24
Table 7. LE Framework as Applied to Individuals.....	25
Table 8. Theoretical Expectations Chapter 5 .....	28
Table 9. Guiding Actors.....	145
Table 10. Receiving Help .....	264
Table 11. Other Problems.....	264
Table 12. Trust in Own Capacity to Perform Acts.....	266
Table 13. Solution to Problems.....	279



## Table of Figures

Figure 1. Map.....	260
Figure 2. What I Want is ... ..	267
Figure 3. What I Have is ... ..	268
Figure 4. What I am Capable of Doing is ... ..	270
Figure 5. Choosing Resources.....	314
Figure 6. Presence of Mediation .....	332
Figure 7. Problems Solved Victims .....	345
Figure 8. Problems Solved PPO .....	345
Figure 9. Complaints Filed Away.....	345
Figure 10. Complaints Opened.....	345



# Chapter 1

## Introduction

### 1.1. Motivation

Members of society approach the judicial system when facing problems. Connections between the judicial system and the members of society should flow smoothly under ideal conditions, yet that is not always the case. This lack of flow generates unequal access to the courts and to the use of rights, especially for vulnerable groups. Reforms are currently being implemented in a number of jurisdictions to support the efforts of vulnerable groups to access the judicial system; for example, by means of adopting tailor-made laws and establishing organizations that implement initiatives to specifically attend to the needs of those groups.<sup>1</sup>

Legal provisions and state organizations are presumed to serve individuals to find remedies to problems. Legal provisions hereto are expanded to assist different groups in their search for remedies,<sup>2</sup> while the state is positioned as an active actor capable of assuring legal remedies.<sup>3</sup> Legal empowerment has developed as a concept that uses the law as a tool for individual development because it assumes that when individuals know their legal options to seek for remedies they gain control over them.<sup>4</sup> State organizations within the judicial system are instruments used by individuals to obtain access to justice. Equal access to justice improves when legal provisions and state organizations within the judicial system develop strategies to include every individual, especially members of vulnerable groups.<sup>5</sup> Therefore, even when not directly designed to legally empower, state organizations within the judicial system assist individuals to start their processes of legal empowerment by providing a structure and a service to understand the legal options and to claim for legal remedies. Developments in legal provisions and the creation of state organizations within the judicial system assume that individuals increase their possibilities to claim for legal remedies when they have recognition of rights and instruments to exercise them. The state is given, within this dynamic, an active role.<sup>6</sup>

This study focuses on understanding *how access to justice legally empowers women victims of domestic violence*. Legal provisions, in the city of Buenos Aires, Argentina, represent the rules analysed in this study; while the Public Prosecutor's Office of the City represents the Legal Organization subject to analysis. Moreover, women victims of domestic violence represent the vulnerable group. The perceptions and behaviours of women victims of domestic violence who access the Public Prosecutor's Office of the City

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<sup>1</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*.

<sup>2</sup> Rhode, *Access to Justice*, 7–8.

<sup>3</sup> Cappelletti, Weisner, and Seccombe, *Access to Justice and the Welfare State*, 4–6.

<sup>4</sup> Golub, “What is Legal Empowerment? An Introduction,” 1–3.

<sup>5</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 9–10.

<sup>6</sup> Cappelletti, Weisner, and Seccombe, *Access to Justice and the Welfare State*, 4–6; Sarat, “Review of Access to Justice,” 1914–15.

with criminal complaints on threats,<sup>7</sup> harassment,<sup>8</sup> or breach of family assistance duties<sup>9</sup> in the context of domestic violence are subject to analysis in this study. The study develops a legal empowerment framework and the analysis uses a qualitative research design that relies on a variety of sources (e.g. legal provisions, observations, interviews).

This study works with a normative justification for the existence of rights and departs from a conceptual assumption that legal provisions and state organizations within the judicial system can serve as a tool for individuals to increase their legal empowerment. Moreover, this study disaggregates the analysis of legal empowerment into rules (that derive from legal provisions) and perceptions and behaviours (that derive from state organizations within the judicial system and women victims of domestic violence). However, this study does not judge whether individuals should be legally empowered nor does it assess how much legal empowerment a victim gains after having had access to justice. Moreover, this study does not assume that the Public Prosecutor's Office of the City has as a goal the legal empowerment of those who obtain access; but rather it looks at the elements that can be perceived to legally empower women victims of domestic violence based on a legal empowerment framework. Finally, this study analyses law in action, and delves into the complex dynamics and discrepancies between laws and perceptions, between law and society; and it highlights the factors that are present in the process of legal empowerment. This study will demonstrate changes in multiple perceptions of women victims of domestic violence after they access the Public Prosecutor's Office of the City.

## 1.2. Justification of the Topic

This study works with the phenomenon of legal empowerment (LE) and analyses how access to justice can legally empower women victims of domestic violence (Victims)<sup>10</sup> assuming that individuals seek access to justice in search of help. There is, however, a lack of understanding in the current literature on what happens to individuals when they obtain access to justice, especially in Latin America. This study intends to understand how Victims perceive their access to justice expecting that they will gain LE. The study thus disaggregates the claim into three levels: legal provisions, state organizations within the judicial system (Legal Organizations), and individuals.

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<sup>7</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 149bis(1).

<sup>8</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 52.

<sup>9</sup> Congreso de la Nación Argentina, *Ley 13944*.

<sup>10</sup> This general understanding of Victims applies to the entire study. It should be noted that the term Victims in this study has two further specific dimensions. First, Victims in chapters 3 and 4 are the individuals to whom a public policy is targeted. That public policy is materialized in, but not limited to, legal provisions and/or organizational strategies. Second, Victims in chapter 5 are the individuals who submitted criminal complaints on domestic violence against a potential aggressor and who accessed the PPO alleging the existence of threats, harassment, or breach of family assistance duties.

Legal scholars recognize access to justice as an important and universal right and categorize it as a human right.<sup>11</sup> There is, however, limited research that tries to understand the perceptions and behaviours of individuals when they obtain access to justice. Therefore, this study contributes to the current literature by exploring what happens to Victims through looking at the phenomenon of LE, allowing the capture of how Victims perceive and behave after accessing a legal structure that proposes legal mechanisms as a tool to solve problems.

The value of this study lies in the analysis of legal provisions and in empirical findings presented in the chapters that follow. This section, however, offers initial understandings developed by the existing literature of recurring elements that served as points of departure for the study.<sup>12</sup> Chapter 2, moreover, develops a LE framework that is then applied in the subsequent chapters.

National surveys have been carried out in several developed countries, primarily by state organizations (e.g. Ministry of Justice, law reform commissions).<sup>13</sup> These surveys show that within a three-year period between 37 per cent and 67 per cent of low- and middle-income sectors experience one or more problems with legal connotations considered to be difficult to solve.<sup>14</sup> The results of those surveys enabled countries, for the first time, to understand justice from a socio-centric perspective and as a complement to the traditional doctrinal analysis. The surveys intend to find the type and amount of legal needs people face in a given time period. They look at the paths people follow to solve the problems, the type of legal services available, and the awareness before and the perceptions after the interaction with the judicial system.<sup>15</sup> This line of research was started in the 1970s with the collection edited by Mauro Cappelletti and Bryant Garth titled “Access to Justice.”<sup>16</sup> That collection recognizes the importance of considering the social dimension of access to justice by answering a question: *Justice for whom?* Those studies relate the actual needs of the people and the system.<sup>17</sup> The collection also explores ways to achieve equal justice and considers Legal Organizations as state organizations created by modern societies to tackle non-access to justice for those in need.<sup>18</sup>

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<sup>11</sup> e.g. American Bar Association, “Access to Justice & Human Rights”; Sepúlveda and Donald, “Access to Justice for Persons Living in Poverty”; Ministerio de Justicia y Derechos Humanos, “[Http://www.jus.gob.ar/accesoalajusticia/servicios/mediacion-Comunitaria.aspx](http://www.jus.gob.ar/accesoalajusticia/servicios/mediacion-Comunitaria.aspx).”

<sup>12</sup> Qualitative research scholars already challenged the need for an exhaustive literature review for qualitative studies. See e.g. Wolcott, *Writing up Qualitative Research*, 67–70.

<sup>13</sup> Macdonald, Roderick A., “Access to Civil Justice,” 498–99.

<sup>14</sup> e.g. England and Wales, 34% (Genn, *Paths to Justice: What People Do and Think about Going to Law*); US, 50% (Research and Public, *Legal Needs and Civil Justice: A Survey of Americans: Major Findings of the Comprehensive Legal Needs Study*, 1994); the Netherlands, 67% (van Velthoven and ter Voert, “Paths to Justice in the Netherlands”); and New Zealand, 51% (Maxwell et al., “Meeting Legal Service Needs”).

<sup>15</sup> Barendrecht, Kamminga, and Verdonschot, “Priorities for the Justice System”; Currie, “A National Survey of the Civil Justice Problems of Low- and Moderate-Income Canadians: Incidence and Patterns,” 2006; Pleasence et al., “Causes of Action: Civil Law and Social Justice.”

<sup>16</sup> Cappelletti and Garth, *Access to Justice Vol. I*.

<sup>17</sup> Macdonald, Roderick A., “Access to Civil Justice,” 493–98.

<sup>18</sup> Cappelletti, Gordley, and Johnson, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*, 77–132.



Access to justice represents, as recognized by Roderick A. Macdonald, the fundamental right of people to seek and be granted justice.<sup>19</sup> Justice can be granted by different mechanisms not limited to the traditional access to courts.<sup>20</sup> Innovations in different mechanisms of access to justice aim to grant access for all, eliminating common obstacles faced by vulnerable groups.<sup>21</sup> The theory developed by incorporating an inclusive aspect in which,

access to justice exists if people, notably poor and disadvantaged, suffering from injustices, have the ability to make their grievances be listened to and to obtain proper treatment of their grievances by state or non-state institutions leading to redress of those injustices on the basis of rules or principles of state law, religious law or customary law in accordance with the rule of law.<sup>22</sup>

Different attempts are being made to innovate in the forms of Legal Organizations that can approach vulnerable groups. Components such as specialized tribunals or Legal Organizations, proximity to the geographical area where problems take place, and knowing the targeted population have shown a good impact on access to justice for those seeking help.<sup>23</sup> Consequently, Legal Organizations have been created to assist people in accessing the judicial system and exercising their rights. These Legal Organizations, mostly known as legal aid offices, first appeared as part of state policies in Europe and North America in the 1970s<sup>24</sup> and require considerable allocation of resources.<sup>25</sup>

Different programmes have been created to improve access to justice, especially for those in need. The United Nations (UN) placed its efforts in Asia and Africa, yet there are few studies in Latin America. The projects and research carried out by the UN aim at strengthening the rule of law and at empowering different vulnerable groups to make use of their rights. Their studies suggest that a lack of genuine access to justice is a sign of inequality and lack of societal well-being. Some leading programmes are: (i) *Justice for the Poor Program* (World Bank) that focuses on the relation between exclusion, poverty, and lack of access.<sup>26</sup> This programme has developed users and population surveys in African countries.<sup>27</sup> (ii) *Commission on Legal Empowerment of the Poor* (UN Development Programme) that works on the concept and dynamics of LE and

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<sup>19</sup> Macdonald, Roderick A., "Access to Civil Justice," 494–95.

<sup>20</sup> *Ibid.*, 503–9.

<sup>21</sup> Wojkowska and UNDP, "Doing Justice: How Informal Justice Systems Can Contribute."

<sup>22</sup> Bedner and Vel, "An Analytical Framework for Empirical Research on Access to Justice," 7.

<sup>23</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*; Pleasence et al., "Causes of Action: Civil Law and Social Justice"; Scott, "Juvenile Courts"; UNDP and Douglas, "Gender Equality and Justice Programming: Equitable. Access to Justice for Women."

<sup>24</sup> Cappelletti, Gordley, and Johnson, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*, 29–76.

<sup>25</sup> Barendrecht, Mulder, and Giesen, "How to Measure the Price and Quality of Access to Justice?"

<sup>26</sup> World Bank, "Justice for the Poor."

<sup>27</sup> See publications available at World Bank, "Justice for the Poor. Publications."

inclusion. Its work focuses on East-Asian countries.<sup>28</sup> (iii) *Tilburg University-TISCO-HiiL*<sup>29</sup> that works on civil law and conflict resolution from a law and economics perspective, measuring costs and quality of paths to justice.<sup>30</sup> (iv) *Namati Innovations in Legal Empowerment*<sup>31</sup> that works with grassroots advocates assisting people in the understanding and use of their rights. (v) *Open Society Foundation*<sup>32</sup> that developed a “global legal empowerment initiative” to achieve a higher understanding of rights by people.

The importance of a problem can be determined by observing whether people seek external assistance,<sup>33</sup> though this is not the case in domestic violence where previous studies show that the psychological dimension plays a relevant role in the realization of the problem and in the decision to seek help.<sup>34</sup> Most problems perceived as important were found in previous studies to occur between people with strong ties in relationships (e.g. family, neighbours, and labour relations);<sup>35</sup> and relationship breakdowns such as divorce and domestic violence are considered difficult to forget, showing “no or little evidence of memory decay.”<sup>36</sup> Amongst the reasons for inaction are the lack of knowledge on rights and places for assistance, costs of procedural requirements, and stress or fear.<sup>37</sup> Relationship breakdowns have motivated, amongst other steps, the creation of specialized tribunals and specialized Legal Organizations. The urgency to tackle this unattended legal problem can be sensed by the recent emergence of specialized tribunals, Legal Organizations, and tailor-made laws.<sup>38</sup>

Research to understand and measure LE has gained momentum since the 2000s.<sup>39</sup> LE is the process of knowing the legal options from which to make choices. It is

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<sup>28</sup> UNDP, “Programming for Justice: Access for All”; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I”; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol II”; UNDP, “Integrating Legal Empowerment of the Poor in UNDP’s Work. A Guidance Note”; UNDP and Laberge, “Framework Paper I”; UNDP and Luchsinger, “Access to Justice in Asia and the Pacific. a DGTTF Comparative Experience Note Covering Projects in Cambodia, India, Indonesia and Sri Lanka.”

<sup>29</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems.

<sup>30</sup> Barendrecht, Kamminga, and Verdonchot, “Priorities for the Justice System”; Barendrecht, “Legal Aid, Accessible Courts or Legal Information?”; HiiL, “Towards Basic Justice Care for Everyone, Challenges and Promising Approaches.”

<sup>31</sup> Namati, “Namati Innovations in Legal Empowerment.”

<sup>32</sup> Open Society Foundations, “The Global Legal Empowerment Initiative.”

<sup>33</sup> Pleasence et al., “Causes of Action: Civil Law and Social Justice.”

<sup>34</sup> Burton, “Domestic Abuse. Literature Review,” 3, 18; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 4.

<sup>35</sup> Barendrecht, Kamminga, and Verdonchot, “Priorities for the Justice System”; Pleasence et al., “Causes of Action: Civil Law and Social Justice”; Research and Public, *Legal Needs and Civil Justice: A Survey of Americans: Major Findings of the Comprehensive Legal Needs Study*, 1994.

<sup>36</sup> Pleasence et al., “Causes of Action: Civil Law and Social Justice,” 177.

<sup>37</sup> Currie, “A National Survey of the Civil Justice Problems of Low-and Moderate-Income Canadians: Incidence and Patterns,” 2006.

<sup>38</sup> e.g. Ontario Court of Justice, “Integrated Domestic Violence Court”; National Institute of Justice, “New York Integrated Domestic Violence Courts”; Ministry of Justice, “Early Evaluation of the Domestic Violence, Crime and Victims Act 2004.”

<sup>39</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 1; Golub, “What is Legal Empowerment? An Introduction,” 2.

understood as a means to an end, and legal provisions and Legal Organizations are used as tools for people to take control over their lives.<sup>40</sup> It is also understood as an end, when used as a concept to assess whether people have more legal power after having had access to justice.<sup>41</sup> LE relies on the concept of equal access and use of the law, and as sustained by the United Nations Development Programme (UNDP), the concept rests on the principle addressed by the Universal Declaration of Human Rights which states that “all human beings are born free and equal in dignity and rights.”<sup>42</sup> LE was originally connected to the improvement of the legal situation of the poor when using legal remedies in the form of legal provisions and Legal Organizations.<sup>43</sup> Some studies further address a positive relation between LE and the reduction of poverty, and understand LE as a “means of escaping poverty.”<sup>44</sup> This study, however, does not attempt to measure how LE affects poverty, but how access to justice affects LE.

Another key study performed by UNDP addresses four pillars needed to obtain LE: access to justice and the rule of law, property rights, labour rights, and business rights.<sup>45</sup> This study analyses access to justice as the pillar that triggers LE, and views which elements assist in the LE of Victims who access a Legal Organization. The approach to LE relies, for some scholars, on paralegal initiatives instead of Legal Organizations, located in developing countries meant to legally empower a targeted and vulnerable group (e.g. women in rural areas).<sup>46</sup> However, other studies address the state as a key actor to ensure LE.<sup>47</sup>

At an individual level, LE also considers the gaining of decision-making power by having access to information and resources. The wider the gap is between a powerful party and a non-powerful party, the greater the need for external assistance to empower the latter.<sup>48</sup> For example, in the UK it was noted that 31 per cent of the people who took action to solve their legal problems experienced “a sense of empowerment,” and that a satisfactory feeling was derived from enforcement of rights.<sup>49</sup> Providers working for Legal Organizations are perceived as having the capacity to empower those who access the judicial system by explaining how to deal with legal situations and how to avoid further legal problems.<sup>50</sup> From an economic perspective, no studies indicate that the cost and benefit analysis of allocation of resources in Legal Organizations is sufficient for empowerment.<sup>51</sup> Consequently, LE

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<sup>40</sup> Golub, “What is Legal Empowerment? An Introduction,” 2–7.

<sup>41</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 3.

<sup>42</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 4.

<sup>43</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 5–6.

<sup>44</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 29.

<sup>45</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 5–9.

<sup>46</sup> e.g. Golub, “What is Legal Empowerment? An Introduction”; Golub, “Beyond Rule of Law Orthodoxy”; Goodwin and Maru, “What Do We Know about Legal Empowerment? Mapping the Evidence.”

<sup>47</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 10.

<sup>48</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 4–5.

<sup>49</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 193.

<sup>50</sup> Barendrecht, “Legal Aid, Accessible Courts or Legal Information?”

<sup>51</sup> Ibid.

is not studied from an economic perspective, but rather as an alternative way of resolving conflicts.

### 1.3. Qualitative Empirical Legal Research

Qualitative empirical legal research methodology is used in this study to research the relation between access to justice and LE. The methodology used in this study is fully developed in the methodology sub-section of chapter 2 (2.2.). A qualitative methodology has been used in previous empirical legal studies to obtain input about the processes and impacts of newly created Legal Organizations from key stakeholders and users of services.<sup>52</sup> Moreover, the methodology has been recognized as valuable for the legal discipline when the desire is to understand “how law works in the real world”<sup>53</sup> and to complement scholarly work with systematic studies meant to understand the active relation between law and society.<sup>54</sup> The application of a different methodology to understand a discipline can likewise bring a novel view on the existence of particular social phenomena and their nature.<sup>55</sup>

Qualitative empirical legal research helps to recognize patterns or themes and allows the exploration of policy shifts and problems within systems.<sup>56</sup> Consequently, the analysis that derives from the application of a qualitative methodology may assist academics (mostly in law, political science, and sociology) and policymakers to better understand a given reality, and perform accordingly.<sup>57</sup> As Jan Smits pointed out in 2005, a multidisciplinary approach is welcomed since “in order to obtain a full picture of the research question, not only law, but also insights from economics, [sociology], and psychology are [to be] taken into account.”<sup>58</sup>

This study relies on observations, interviews, and document analysis methods. Thus, the research questions are answered by the understanding and interpreting of data collected from different actors and sources.<sup>59</sup> Interviews with the main actors were determinant in addressing the research questions because, as explained by Hazel Genn, qualitative interviews serve to “provide in-depth information about behaviour, decision-making and motivation, permitting a more detailed tracing of the *process* through which disputes were handled.”<sup>60</sup>

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<sup>52</sup> e.g. Ministry of Justice et al., “Women Specific Condition Pilot.”

<sup>53</sup> Nuffield Foundation, “Nuffield Inquiry on Empirical Legal Research. Law in the Real World.” See also the cluster Empirical Legal Studies of “NSCR. The Netherlands Institute for the Study of Crime and Law Enforcement,” operating to produce scientific legal research.

<sup>54</sup> Hillyard, “Law’s Empire.”

<sup>55</sup> Banakar and Travers, *Theory and Method in Socio-Legal Research*, 4–6.

<sup>56</sup> Webley, Lisa, “Qualitative Approaches to Empirical Legal Research,” 929.

<sup>57</sup> Epstein and Martin, *An Introduction to Empirical Legal Research*, 4.

<sup>58</sup> Smits, “Introduction,” v.

<sup>59</sup> For a note on what defines an empirical legal study, see Epstein and Martin, *An Introduction to Empirical Legal Research*, 1–21; on the value of data for empirical legal studies, see also Macdonald, Roderick A., “Access to Civil Justice,” 495–97.

<sup>60</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 18.

## 1.4. Research Questions

Understanding the effects of LE on access to justice requires studies on those who access the judicial system, referred to by scholars as “the demand side.”<sup>61</sup> Legal empirical studies are needed to understand perspectives on how access to justice affects capacities to solve problems.<sup>62</sup> This study explores *how access to justice legally empowers victims of domestic violence*. This main research question is divided into three groups of sub-questions. Each of the three levels of analysis (i.e. legal provisions, Legal Organizations, and individuals) has a group of sub-questions that serve as a guiding structure for this study.

Sub-questions are therefore analysed through the subsequent chapters. The closing statements presented in chapter 6 do not address the research questions directly, but instead provide a comprehensive summary and reflections, and recommendations. The theoretical justification of the research questions is presented in chapter 2.

### 1.4.1. Sub-question on Legal Provisions

1. How do legal provisions that enhance LE develop over time?

### 1.4.2. Sub-questions on Legal Organizations

1. What are the LE elements incorporated by recent Legal Organizations?
  - a. What are the motivations for the organizational set-up?
  - b. How do providers implement channels to access to justice?
  - c. How do providers work within the framework offered by legal provisions?
  - d. To what extent do providers consider legal provisions and Legal Organizations beneficial to resolve conflicts?

### 1.4.3. Sub-questions on Individuals

Before Victims access the judicial system:

1. To what extent do Victims perceive their problems as legal problems?
2. What paths do Victims follow to seek access to justice?

Once Victims access the judicial system:

3. What elements do Victims perceive as being important to solve problems?
4. How do Victims perceive legal options as tools to solve problems?
5. How do Victims become aware of rights?
6. What is the effect of becoming aware of rights?
7. How do Victims comply with the requirements of the judicial system?
8. How do Victims activate rights and claim for them?

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<sup>61</sup> Barendrecht, Mulder, and Giesen, “How to Measure the Price and Quality of Access to Justice?”; Macdonald, Roderick A., “Access to Civil Justice,” 518.

<sup>62</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 32–33; Macdonald, Roderick A., “Access to Civil Justice,” 518; Genn, *Paths to Justice: What People Do and Think about Going to Law*, 265–64.

9. How do Victims transfer the legal information learned after having had access to justice?

The sub-questions served to design the methods used to collect data (2.2.). Later on, those sub-questions were translated into matrixes to start the analysis of data (annexes 1–3). The sub-sections of the three chapters represent the final structure that lists the elements that contribute to each of the components of the LE framework presented in chapter 2 (2.1.). Some elements derive from the sub-questions and matrixes (deductive) and others derive directly from the data (inductive). The matrixes are presented as annexes to guide readers through the steps taken in this study: starting from a more deductive approach and moving towards a more inductive approach, where the lessons from fieldwork gained relevance for the understanding of the research questions.

### 1.5. Structure of this Study

To answer the research questions, this study starts from a theoretical justification that is enriched with an empirical contribution. The study is divided into six chapters. Chapter 1 presents the motivation and relevance of the topic. Chapter 2 creates a novel LE framework that combines two aspects: three levels of analysis (legal provisions, Legal Organizations, and individuals) with four components proposed by the United States Agency for International Development (USAID) (rights enhancement, rights awareness, rights enablement, and rights enforcement). Furthermore, that same chapter presents the methodology of this study. Chapter 3 applies the LE framework to the applicable legal provisions in the city of Buenos Aires, Argentina (City), consequently addressing the first level. Chapter 4 covers the second level, and it applies the LE framework to the Legal Organization selected for this study (i.e. the Public Prosecutor's Office operating in the City). Chapter 5 applies the LE framework to a sample of Victims who accessed the Legal Organization analysed in chapter 4. Lastly, chapter 6 offers a summary, reflections, and recommendations based on the main learnings from the qualitative empirical legal research designed in this study to understand how access to justice legally empowers Victims.

This study does not answer a normative question assessing whether Victims should be legally empowered, or whether legal provisions and Legal Organizations should include a LE approach. This study, rather, focuses on understanding how legal provisions and Legal Organizations have elements to legally empower Victims and what elements are perceived by Victims as legally empowering. The latter occurs under the assumption that a LE approach enhances the involvement of the affected parties in the resolution of conflicts and it enhances their chances to exercise their personal expressions of themselves. Moreover, this study does not focus on assessing the quality of the service delivered by Legal Organizations. This study, rather, analyses the decisions made by actors to design the Public Prosecutor's Office of the City (PPO) and the way providers perceive that design as beneficial for Victims, assuming that a system which is designed on the basis of the understanding of the conflict brought about by the parties will propose better alternatives to resolve that conflict.



## Chapter 2

### Theoretical Framework and Methodology

#### 2.1. LE Framework

##### 2.1.1. Development of the LE Framework

Legal empowerment (LE) can be understood as the process of knowing the legal options from which to make choices and gain control of one's personal life.<sup>1</sup> Those seeking justice gain protection and opportunities by obtaining access to justice, as a means of rights awareness and recognition, obtaining voice and identity as members of society.<sup>2</sup> For the purpose of this study, LE is used to understand the way in which Victims gain capacity as they gain access to justice. Victims are the vulnerable group selected for analysis in this study. LE is viewed as a process of gaining control over problems that are affecting the well-being of Victims.<sup>3</sup>

This study starts from a framework proposed by USAID in 2007 to measure the concept of LE by developing a list of quantitative indicators.<sup>4</sup> This framework suggests that LE has four components with a cyclical relation. The four components are: rights enhancement, rights awareness, rights enablement, and rights enforcement. Rights enhancement incorporates the developments in legal provisions and Legal Organizations by providing available channels for vulnerable groups to influence the system.<sup>5</sup> Rights awareness represents the cognitive component of the framework and incorporates possible ways for those seeking justice to recognize the existence of their rights and ways in which to exercise them.<sup>6</sup> It can be viewed as the “foundation of LE.”<sup>7</sup> Rights enablement includes the available mechanisms to effectively exercise and make use of rights, while rights enforcement contemplates mechanisms of effectively applying legal provisions to a situation.<sup>8</sup> The cyclical relation amongst components claims that legally empowered people increase their democratic participation becoming, eventually, members of bottom-up movements and engaging in policy design.

The framework suggested by USAID can also be enriched by other works that study LE. Especially relevant are the works of Golub, Gramatikov, Porter, van Rooij, and van de Meene.<sup>9</sup> Rights enhancement contemplates primarily the developments in legal

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<sup>1</sup> Golub, “Beyond Rule of Law Orthodoxy,” 3.

<sup>2</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 4, 44–47.

<sup>3</sup> Gough, “Empowerment,” 2–5.

<sup>4</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 11, 35–37.

<sup>5</sup> Ibid., 11.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., 17.

<sup>8</sup> Ibid., 11.

<sup>9</sup> Golub, “What is Legal Empowerment? An Introduction”; Golub and IDLO, *Legal Empowerment: Practitioner's Perspectives*; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment”; Porter, “Measurement of Legal Empowerment through the Subjective Perceptions of Individuals”; Porter, “Transition and Empowerment.”



provisions as being key elements for the ultimate use of rights, especially by vulnerable groups.<sup>10</sup> This study, however, extends the stage of rights enhancement to developments in respect of Legal Organizations and Victims. Therefore, this study analyses the developments in Legal Organizations to better assist Victims to obtain access to justice and resolve their conflicts; and it analyses the developments that Victims undergo to obtain access to justice and to sustain their legal proceedings. Other legal scholars also recognize that those seeking justice are legally disempowered when there is a lack of legal provisions that they can use, and a lack of accessible and transparent Legal Organizations that can assist them to secure the implementation and enforcement of rights.<sup>11</sup>

Moreover, the lack of developments in legal provisions to ensure democratic participation also contributes to legal disempowerment, because it promotes the lack of autonomy in community decision-making, lack of self-reliance, social learning, and consequently lack of participation in the policy process.<sup>12</sup> Therefore, legal provisions and Legal Organizations that provide proper mechanisms for people to voice themselves in the policy process are viewed as contributing to democratic participation.<sup>13</sup>

There is an assumption that vulnerable groups do not have the social power to improve their life conditions.<sup>14</sup> The empowerment model of John Friedmann contemplates the use of “local units of governance,” not to plan for the vulnerable, but to politically empower them.<sup>15</sup> Nils Christie analyses from a criminologist perspective and criticizes judicial systems that separate victims from their conflicts, and proposes a system that enhances the participation of the parties.<sup>16</sup> Social participation is then obtained and democracy is improved because the acquisition of social and political power increases social and personal conditions.<sup>17</sup>

Rights awareness, also referred to as legal awareness by scholars,<sup>18</sup> is a key factor for the LE process and an aspect of the definition of the concept since it was first used in 2001.<sup>19</sup> This cognitive component indicates whether people know their rights.<sup>20</sup> A gap is frequently observed between rights and the capacity to realize their existence and

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<sup>10</sup> For an analysis on how the design of the judicial system is an impediment to the use of rights of vulnerable groups, see Gargarella, “‘Too Far Removed from the People’ Access to Justice for the Poor: The Case of Latin America.”

<sup>11</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10.

<sup>12</sup> Friedmann, *Empowerment: The Politics of an Alternative Development*, 66–71.

<sup>13</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 11–16.

<sup>14</sup> Friedmann, *Empowerment: The Politics of an Alternative Development*, 57–58, 66.

<sup>15</sup> *Ibid.*, 35–36.

<sup>16</sup> Christie, “Conflicts as Property.”

<sup>17</sup> Friedmann, *Empowerment: The Politics of an Alternative Development*, 164.

<sup>18</sup> e.g. Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment.”

<sup>19</sup> Referring to the report published by the Asian Development Bank’s Legal Department, see Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 1.

<sup>20</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 7.

use.<sup>21</sup> To reduce that gap, there needs to be awareness of the existence of rights together with the understanding of how to claim, defend, and achieve those rights. The awareness of rights is the understanding that people gain of the rights that apply to their problems.

Knowledge is a means for LE and it is a way in which to ensure understanding and enforcement of rights.<sup>22</sup> Reducing the gap requires that efforts are aimed at achieving objectives and that providers identify concrete obstacles faced by those who access the judicial system. The quality of the advice, consequently, plays an important role because it opens unknown possibilities to those seeking justice.<sup>23</sup> Legal scholars recognize that efforts have to focus on providing accessibility and understanding of legal provisions (substantial and procedural), which is possible when there is an increase in capacities and in the awareness that helps those seeking justice to overcome problems.<sup>24</sup> Hence, the role of providers in the judicial system is paramount in the process of LE. It is important to analyse the strategy the judicial system takes to legally empower by means of education and transfer of information on rights and on the functioning of the judicial system. However, the ownership of the legal problems has to stay with those who seek help from the judicial system, and not in the judicial system itself.<sup>25</sup>

Rights enablement studies the mechanisms available to people to exercise and make use of rights especially by means of procedural assistance (e.g. completion of forms). Rights enablement moreover indicates whether people perceive their rights as actionable.<sup>26</sup> Often, the enablement of rights relies on the services by Legal Organizations and on reforms in existing legal provisions (e.g. those that enable people to assert and defend their rights).<sup>27</sup> People need the authority or means to enforce a right. Rights enablement is consequently obtained by ensuring that those seeking justice can first gain options to overcome the bureaucratic and economic barriers that affect access to opportunities to gain control over their lives.<sup>28</sup> This is done by Legal Organizations and reforms in legal provisions.<sup>29</sup> Legal Organizations therefore serve as instruments to influence the individual capacity of people to make choices and materialize them into desired actions and outcomes.<sup>30</sup>

Rights enforcement studies the actual chances Victims have to use mechanisms available to execute rights. Actual chances are provided by the existence of legal provisions and Legal Organizations. Legal disempowerment is vivid when there is a

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<sup>21</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 16.

<sup>22</sup> Ibid., 11.

<sup>23</sup> Ibid., 22–24.

<sup>24</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 11, 20–23.

<sup>25</sup> Christie, "Conflicts as Property," 7–10.

<sup>26</sup> Gramatikov and Porter, "Yes, I Can: Subjective Legal Empowerment," 22.

<sup>27</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 20.

<sup>28</sup> Ibid., 11.

<sup>29</sup> Ibid., 20.

<sup>30</sup> Alsop, Bertelsen, and Holland, *Empowerment in Practice*, 15–18.

lack of legal provisions and a lack of accessible and transparent Legal Organizations to secure the enforcement of rights by appropriate mechanisms.<sup>31</sup>

This study builds on the above-mentioned framework and recognizes a need for analysing the four components at different levels: (i) legal provisions, (ii) Legal Organizations, (iii) individuals. This approach is required because LE involves the three levels, yet these, being different, cannot be analysed together. The four components are therefore adjusted in this study to the particularities of each level. Consequently, when applied to legal provisions LE contemplates how they speak to the phenomenon. When applied to the organizational level, LE analyses how Legal Organizations can legally empower those who obtain access and deals with the way Legal Organizations are designed and the service they deliver. Lastly, when applied to individuals, LE considers how Victims perceive their empowerment while having access to justice.

### 2.1.2. Framework for the Case Study

The case study approach is used to understand the phenomenon of LE in context.<sup>32</sup> In this study the context is provided by three levels (i.e. legal provisions, Legal Organizations, individuals). The three levels are viewed as a source of LE: LE through legal provisions, LE through Legal Organizations, and LE in Victims.<sup>33</sup> Consequently, Victims are viewed mostly as receivers of LE through different resources (e.g. legal provisions and Legal Organizations). All three levels relate to events that took place in the City, being an example of a local government with assumed proximity to its inhabitants, that is, to the people. Chapter 3 considers legal provisions that are enforceable in the City. Chapter 4 considers the PPO,<sup>34</sup> as an example of a Legal Organization, and chapter 5 considers Victims.

The LE framework created for the purpose of organizing and delivering the findings of this study is adjusted to each level. Furthermore, different data sources are used to understand each level. The matrix below shows a simplification of the LE framework created for this study. This novel approach, as mentioned before, encapsulates the main principles that apply to each level and component.

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<sup>31</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10–11.

<sup>32</sup> Baxter and Jack, “Qualitative Case Study Methodology”; Yin, *Case Study Research Design and Methods*; Gibbert and Ruigrok, “The “What” and “How” of Case Study Rigor.”

<sup>33</sup> e.g. within the definition of LE provided by Bruce et al., the government, “the poor and others” are viewed as sources of LE; see Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 29.

<sup>34</sup> For a description of the operation of the PPO, see MPF CABA, “Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires.”

	Chapter 3	Chapter 4	Chapter 5
Levels Components	Legal Provisions <sup>35</sup>	Legal Organizations <sup>36</sup>	Individuals <sup>37</sup>
<b>Rights Enhancement</b> Develop	Developments in the law framed in guiding rights.	Developments in the PPO.	Development in perceptions of Victims.
<b>Rights Awareness</b> Understand	Legal provisions on legal understanding.	Strategies to communicate rights awareness.	The way Victims understand rights.
<b>Rights Enablement</b> Exercise	Legal provisions on tools to enable the exercise of rights.	Strategies to enable the exercise of rights.	The way Victims exercise rights.
<b>Rights Enforcement</b> Implement	Legal provisions on tools to implement rights.	Strategies to implement rights.	The way Victims implement rights.

Table 1. LE Framework

### 2.1.2.1. Legal Provisions

Chapter 3 applies the LE framework to legal provisions. The chapter looks at the Argentine Constitution, human rights treaties, federal laws, City laws, and PPO internal regulations. This study selects four overarching rights, referred to as “guiding rights.” Guiding rights are created for this study and are fundamental for an understanding of the relation between access to justice and the LE process. Those guiding rights are: (1) right of women to a life free of discrimination and violence, (2) right to access to justice, (3) right to a remedy, and (4) right to democratic participation.

The guiding right of women to a life free of discrimination and violence is the overarching right that protects Victims. This guiding right primarily contemplates how legal provisions incorporate a social value to reduce discrimination against women and ensure them a life free of violence and provide ways for people to make use of that guiding right. Violence is considered as a form of discrimination, hence the guiding right addresses the concept of discrimination in order to provide context to the right to a life free of violence. This guiding right is incorporated because it rules on the specific rights that deal with Victims.

The guiding right to access to justice appears in the process of LE as allowing people to enter the judicial system and delimitating the starting point of the LE process of Victims. It is a fundamental right since the exercise of other rights depends on the exercise of the right to access to justice. This guiding right primarily contemplates the recent legal provisions that incorporate channels of access to justice and ways in which to achieve justice. Access to justice is understood in a broad sense, not limited to access to courts but including any instance where Victims can become aware of their rights, find ways to exercise their rights, and ultimately enforce them.

<sup>35</sup> Setting: Legal provisions applicable to the City. Period: 1994 – 2014.

<sup>36</sup> Setting: PPO. Period: 2013 – 2014.

<sup>37</sup> Setting: 54 Victims who accessed the PPO. Period: 2013 – 2014.

The guiding right to a remedy comprises the transition of people through the judicial system to obtain a legal remedy. The judicial system is designed under the aspiration of having an independent body to assist people to achieve the value of justice and to arrive at a resolution of their conflict. Hence, this right encompasses developments in legal provisions towards a suitable system for Victims to achieve a remedy for their problems.

The guiding right to democratic participation represents the chances offered by legal provisions to allow people to participate in the policy process. Bruce et al. argue in their study on LE that legal provisions need to provide ways for vulnerable groups to influence the formulation of policies.<sup>38</sup> This ensures that the needs of vulnerable groups are represented in legal provisions, and that provisions represent values of society and not only the values of those directly involved in the policy process. The participation in the policy process is considered possible if people can understand and have the channels to participate, hence, if they are legally empowered to participate. Previous studies also include the influence that vulnerable groups can have in the development of policies, as bottom-up examples.<sup>39</sup>

Chapter 3 applies the LE framework to each guiding right in order to facilitate the understanding of how legal provisions introduce elements to the process of LE. This presentation of the legal provisions serves a heuristic purpose and often borders may be blurred. The table below shows how the LE framework is adjusted to the guiding rights.

<b>Guiding Right 1</b> Right of Women to a Life Free of Discrimination and Violence	<b>Rights Enhancement</b> <ul style="list-style-type: none"> <li>• Constitutional &amp; International</li> <li>• Federal</li> <li>• City</li> <li>• PPO internal regulations</li> </ul> <b>Rights Awareness</b> <ul style="list-style-type: none"> <li>• Constitutional &amp; International</li> <li>• Federal</li> <li>• City</li> <li>• PPO internal regulations</li> </ul> <b>Rights Enablement</b> <ul style="list-style-type: none"> <li>• Constitutional &amp; International</li> <li>• Federal</li> <li>• City</li> <li>• PPO internal regulations</li> </ul> <b>Rights Enforcement</b> <ul style="list-style-type: none"> <li>• Constitutional &amp; International</li> <li>• Federal</li> <li>• City</li> <li>• PPO internal regulations</li> </ul>
<b>Guiding Right 2</b> Right to Access to Justice	
<b>Guiding Right 3</b> Right to a Remedy	
<b>Guiding Right 4</b> Right to Democratic Participation	

Table 2. LE Framework as Applied to Legal Provisions

<sup>38</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 9–10, 12–17, 35.

<sup>39</sup> Alsop, Bertelsen, and Holland, *Empowerment in Practice*, 20, 36; Mendell, “Empowerment: From Noise to Voice,” 4–6.

Rights enhancement in chapter 3 concerns the reforms in legal provisions dealing with the four guiding rights and establishes the context for the LE framework. Reforms in legal provisions ultimately represent the context, motivation, and baseline that derive from a policy decision. Rights enhancement under the LE framework especially looks at the advancement in legal provisions created to eliminate restrictions and to create real opportunities for people to be recognized as users of guiding rights. Moreover, it contemplates the legal provisions that allow people to reduce dependency on resources that may limit their chances to use the law as a tool for LE (e.g. awareness of available options, procedural costs, legal representation costs, impediments to understanding procedural and substantive rights, impediments to making use of those rights and to access to a transparent and fair judicial system). Rights awareness in chapter 3 analyses how legal provisions introduce rules to inform and to generate awareness in people of the existence of the four guiding rights. Moreover, rights awareness examines, on the one hand, the way in which legal provisions incorporate different means and techniques to inform people of their rights and, on the other hand, the way in which those provisions address mechanisms to ensure that providers are aware of the legal changes and of their correct application and interpretation.

Rights enablement in chapter 3 analyses how legal provisions offer tools to facilitate the exercise of the four guiding rights. Particularly, rights enablement looks at the introduction and promotion of tools, mechanisms, and programmes to enable Victims to use guiding rights. Rights enforcement in that same chapter analyses how those legal provisions introduce tools for people to execute guiding rights. Rights enforcement, moreover, looks, on the one hand, at the way in which legal provisions assist in forming an independent, transparent, and well-trained judicial system and, on the other hand, the way in which legal provisions introduce possibilities for people to enforce their rights to communicate with the state and to participate in policy design (i.e. accountability).

LE identifies in legal provisions the ability to change behaviour and, hence, to give “legal power” to vulnerable groups.<sup>40</sup> The design of chapter 3 departs from the analysis of theories that address the importance of the presence of certain rules in legal provisions in order to contribute to the LE of vulnerable groups. The table below highlights a number of theoretical expectations that relate to chapter 3.

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<sup>40</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 12.

<i>Rights Enhancement</i>	- lack of power, opportunities, and capacities of vulnerable groups, <sup>41</sup> based on an unequal power relation between Victims and: legal provisions, Legal Organizations, the accused. <sup>42</sup>
Advances in legal provisions that address the	- consultation with Victims on their problems to eliminate obstacles to exercising rights (e.g. ruling on gender inequality and biases, ruling in favour of the simplicity of legal provisions in order to ensure that they can be known and understood by vulnerable groups). <sup>43</sup>
	- access to justice by vulnerable groups, since LE is only possible if these groups are granted “access to a well-functioning” judicial system. <sup>44</sup>
	- obstacles to access to justice and to exercising rights (e.g. costs, delays, lack of transparency). <sup>45</sup>
	- participation of Victims in legal proceedings due to the recognized importance of giving Victims chances to keep “possession” of conflicts to find suitable remedies. <sup>46</sup>
	- ways to create trustworthy state organizations, since vulnerable groups are normally found not to have trust in state organizations. <sup>47</sup>
	- performance of providers to ensure that vulnerable groups enforce rights. <sup>48</sup>
	- procedural legal provisions to ensure the implementation of substantive legal provisions. <sup>49</sup>

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<sup>41</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 6–8; Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 29.

<sup>42</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 12, 14–16, 35; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 43; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 26–27.

<sup>43</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 13, 20–21, 35; Macdonald, Roderick A., “Access to Civil Justice,” 512–13; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 9–11.

<sup>44</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” sec. foreword.

<sup>45</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 5.

<sup>46</sup> Christie, “Conflicts as Property,” 1–2.

<sup>47</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 44.

<sup>48</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 13.

<sup>49</sup> Ibid.

<i>Rights Awareness</i> Legal provisions that address	rules for the understanding of rights by vulnerable groups (e.g. simple legal terminology) due to the relation addressed by previous studies between understanding and exercising rights. <sup>50</sup> obstacles faced by vulnerable groups in understanding rights. <sup>51</sup> advertisements to increase rights awareness.
<i>Rights Enablement</i> Tools in legal provisions that provide concrete	options for people to obtain access to justice considering common obstacles and increasing LE opportunities. <sup>52</sup> ways to overcome obstacles to access to justice (e.g. physical distance, opening hours, costs, delays, complexities in the judicial system and legal procedure, socio-cultural obstacles). <sup>53</sup> procedural options to contribute to the exercise of rights by vulnerable groups. <sup>54</sup> channels and environments for vulnerable groups to influence the policy process. <sup>55</sup>
<i>Rights Enforcement</i> Legal provisions that provide	real chances and options for vulnerable groups to enforce rights (e.g. limited time periods for providers to deliver, toll-free telephone numbers, state organizations with easy access such as ombudsmen, alternative dispute resolution mechanisms, and flexibility for Legal Organizations to work with parties in the search for remedies). <sup>56</sup> options for people to hold providers accountable for their service, reasoning that transparency and accountability assist in the equal enforcement of rights. <sup>57</sup>

Table 3. Theoretical Expectations Chapter 3

### 2.1.2.2. Legal Organizations

Child considered in the 1980s that “organizations are today the most common mode of collective effort in industrial and urbanized societies; even quite modest

<sup>50</sup> Ibid., 17, 20–21, 35; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 9–11.

<sup>51</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 17.

<sup>52</sup> Ibid., 20–21; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 9–11.

<sup>53</sup> Macdonald, Roderick A., “Access to Civil Justice,” 510–15.

<sup>54</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 30.

<sup>55</sup> Ibid., 22–23.

<sup>56</sup> Ibid., 24–25, 27, 36; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10–11, 15–16.

<sup>57</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 25; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 46; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 14.



improvements could affect millions of people.”<sup>58</sup> However, there is a limit to the influence or effect that organizations can have.<sup>59</sup> The limit is, most of the time, related to the political influence and the unexpected conflicts that may arise affecting their operation.<sup>60</sup>

A preliminary note should be made here to explain the extent of the word ‘organization’ in this study. Organizations are divided into two groups: state and non-state. State organizations encompass organizations that respond to the judicial system, the executive, and the legislature. Legal Organizations, as mentioned before (1.1.), consist of state organizations within the judicial system. Non-state organizations do not respond directly to the state and encompass non-profit organizations (NGOs) and for-profit organizations.

Organizations					
State organizations			Non-state organizations		
Legal Organizations (e.g. OVD, PPO)	Executive organizations (e.g. police stations)	Legislative organizations	For-profit organizations		NGOs

Table 4. Classification of Organizations

Legal Organizations, within the framework proposed by USAID, are means for rights enablement.<sup>61</sup> Chapter 4 applies the LE framework to three groups of actors at the PPO, referred to as “guiding actors.” The three guiding actors are: (i) key civil servants, (ii) justice providers, and (iii) service providers. The three guiding actors influence the final delivery of assistance, though each guiding actor has been identified for this study based on their activities and purpose within the PPO. The objective behind the PPO is not specifically to legally empower those who obtain access, however. Therefore, the selection of the PPO contributes to the understanding of how state organizations can legally empower those who obtain access. The aim of chapter 4 is therefore to understand, from the perceptions of the guiding actors, the elements that may contribute to or act as obstacles for the LE of Victims.

Key civil servants are guiding actors with the capacity to design and implement policies within the PPO. These guiding actors are incorporated in this study in order to understand the strategies implemented by the PPO that contribute to LE.<sup>62</sup> Most key civil servants, with the exception of the head of one of the PPO, do not have permanent positions and are in service independently of the political party in power.

<sup>58</sup> Child, *Organization*, 5.

<sup>59</sup> *Ibid.*, 18.

<sup>60</sup> Organizations often face new constraints and obstacles to performance (e.g. increase of costs, failure in assertive decision-making), *ibid.*, 5.

<sup>61</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 20.

<sup>62</sup> The understanding of the strategies of LE is still unexamined in the LE literature, see Goodwin and Maru, “What Do We Know about Legal Empowerment? Mapping the Evidence,” 51.

Justice providers are guiding actors with the capacity to help the parties in reaching a resolution of their conflict by assisting parties in communication, by representing the interests of society and investigating the case, or by delivering enforceable security measures and court decisions. These actors perform their activities within the limitations established by legal provisions and their intervention is likewise bounded by their public function.

Service providers are guiding actors who assist Victims on a daily basis. This group provides a service within the Victims and Witness Assistance Office (OFAVyT). Service providers assist justice providers with comprehensive reports and assist Victims in the legal procedure. They do not have the capacity to enforce legal provisions, however.

Most guiding actors selected for analysis in this study work at and respond directly to the PPO, with the exception of judges and mediators who respond to the City Superior Tribunal of Justice (City Tribunal) and City Council of Magistrates. Judges and mediators are selected because they participate closely in the tasks of the PPO to assist Victims. Police officers are also key actors though they have been excluded from this study because they respond to the executive. Moreover, this study does not include other secretariats and divisions that also depend on the City Attorney General's Office (City Attorney). The table below shows the relation between the guiding actors analysed in this study.<sup>63</sup>

The three guiding actors were determined as a consequence of fieldwork. Originally, the study was meant to collect information from key civil servants and service providers. However, while doing fieldwork, the research demanded the incorporation of justice providers, since they are able to assist in learning from those who have the capacity to enhance communication, investigate cases, enforce actions, and deliver justice. The table below shows how the LE framework is adjusted to guiding actors. As analysed in chapter 4, each component addresses slightly different aspects, because the understanding of each component derives from the lessons learned from the data collected during fieldwork. Hence, chapter 4 is explorative in nature, and the LE framework is used as a starting point from which to design the methods to collect data and to provide main codes for analyses.

<b>Guiding Actor 1: Key Civil Servants</b>	<b>Rights Enhancement</b> <b>Rights Awareness</b> <b>Rights Enablement</b> <b>Rights Enforcement</b>
<b>Guiding Actor 2: Justice Providers</b>	
<b>Guiding Actor 3: Service Providers</b>	

Table 5. LE Framework as Applied to Legal Organizations

<sup>63</sup> For an overview of the design of the PPO, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, "Nuevo Diseño Organizacional del Ministerio Público Fiscal."

Rights enhancement, within chapter 4, analyses what advancements in legal provisions are viewed as important for the daily activities of the three guiding actors. Moreover, it analyses which type of elements (e.g. legal provisions, court decisions) are used to: (i) design the PPO (i.e. key civil servants), (ii) grant justice (i.e. justice providers), or (iii) assist Victims (i.e. service providers). Rights awareness in chapter 4 analyses how key civil servants introduce policies within the PPO to reduce the gap between rights and the capacity of people to realize their existence and ultimately use them.<sup>64</sup> Rights awareness also analyses the strategies by key civil servants and justice providers to generate awareness in other providers of the rights that Victims have within the applicable legal provisions. In addition, rights awareness considers the strategies used by key civil servants to increase the awareness of rights of Victims, and those used by justice providers and service providers to increase the awareness of rights of Victims who accessed the PPO. Rights enablement in chapter 4 analyses how guiding actors perceive the options given to Victims to enable the use of rights. This component looks into the elements that the three guiding actors view as relevant or as obstacles for Victims to exercise their rights. Lastly, rights enforcement in chapter 4 analyses the elements available at an organizational level for Victims to enforce their rights (this aspect primarily in the eyes of key civil servants) and how Victims make use of them (this aspect primarily in the eyes of justice providers and service providers).

LE identifies Legal Organizations as capable of assisting vulnerable groups to gain “legal power” and resolve conflicts. The design of chapter 4 starts from the analysis of theories that address the importance of the presence of certain organizational strategies and the delivery of service to contribute to the LE of vulnerable groups. The table below highlights a number of theoretical expectations that relate to chapter 4.

<p><i>Rights Enhancement Advances in the PPO that address</i></p>	<ul style="list-style-type: none"> <li>- motivation and elements considered for the creation and design of the PPO structure and objectives in view of the assumed capacity of Legal Organizations to improve access to justice.<sup>65</sup></li> <li>- structural developments to increase the possibility of Victims to participate in the search for remedies, assuming that flexible structures contribute to bottom-up interventions contemplating the capacities and interests of vulnerable groups.<sup>66</sup></li> <li>- implementation of legal provisions assuming difficulties to translate law into actions.<sup>67</sup></li> <li>- cooperation with other organizations assuming that an increase in cooperation contributes to the efficiency of the service delivered.<sup>68</sup></li> <li>- how access points are designed to ensure that Victims have an adequate access to the judicial system and a real possibility to start</li> </ul>
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<sup>64</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 16–20.

<sup>65</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 6–8, 10–11.

<sup>66</sup> Ibid.; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 5–6.

<sup>67</sup> e.g. Burton, “Domestic Abuse. Literature Review,” 14.

<sup>68</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 5, 19; Golub, “What is Legal Empowerment? An Introduction,” 4–5.

	<ul style="list-style-type: none"> <li>- exercising rights.<sup>69</sup></li> <li>- quality of providers assuming that Victims have a better access to justice if they are assisted by trained providers.<sup>70</sup></li> </ul>
<i>Rights Awareness</i> Strategies by guiding actors to	<ul style="list-style-type: none"> <li>- transmit rights awareness through structural designs and implement channels of communication suitable for Victims to understand access to rights and legal procedures contributing to their LE.<sup>71</sup></li> <li>- reach vulnerable groups assuming that LE requires proper access to legal information and that Legal Organizations are capable of designing advertisements that consider the characteristics of different peoples (e.g. language, culture).<sup>72</sup></li> <li>- train providers to ensure their awareness of developments in legal provisions.<sup>73</sup></li> <li>- inform people on rights through oriented advertisements, viewed to be effective to prevent illicit conduct.<sup>74</sup></li> <li>- generate rights awareness assuming that oriented legal literacy campaigns are needed to increase legal understanding, and the participation of vulnerable groups in policy design.<sup>75</sup></li> </ul>
<i>Rights Enablement</i> Strategies by guiding actors to	<ul style="list-style-type: none"> <li>- increase opportunities of Victims to exercise rights by recognizing material and psychological obstacles to access to justice and to participate in the legal proceedings (e.g. costs, delays, complexity, accessibility, opening hours).<sup>76</sup></li> <li>- consider the particularities of Victims to appropriately provide assistance that can develop LE.<sup>77</sup></li> <li>- simplify legal procedures to enable the understanding of the implications of submitting complaints.<sup>78</sup></li> <li>- integrate vulnerable groups into the legal procedure ensuring their active participation.<sup>79</sup></li> <li>- implement ways in which to assess the service provided and adjust it</li> </ul>

<sup>69</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 21–22.

<sup>70</sup> See e.g. Bonnie, “Perceptions of Procedural Fairness in Courts Based Upon Different Types of Interactions with the Courts.”

<sup>71</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 35; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 6.

<sup>72</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 17, 20.

<sup>73</sup> *Ibid.*, 36.

<sup>74</sup> Smith et al., “Mapping Legal Need: A Spatial Analysis of Legal Need in Australia.”

<sup>75</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 17–19, 22.

<sup>76</sup> *Ibid.*, 20–21, 36; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 27; Macdonald, Roderick A., “Access to Civil Justice,” 510–11.

<sup>77</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 17.

<sup>78</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 23; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 21.

<sup>79</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 24.

	<ul style="list-style-type: none"><li>- to the needs of people, considering previous studies that say providers often lack a specialized understanding of the rights of vulnerable groups and the obstacles they face to exercise them, and that access to justice may depend on the quality of the assistance.<sup>80</sup></li><li>- properly assist Victims to reach a remedy, because a failure in the response is considered to disempower more than the unequal power relationship given by the gender.<sup>81</sup></li><li>- assess the extent to which service providers view themselves as capable of assisting Victims in view of the importance that previous studies give to the “subjective self-belief that a person possess[es]” to perform desired activities.<sup>82</sup></li></ul>
<i>Rights Enforcement</i> Strategies by guiding actors to	<ul style="list-style-type: none"><li>- ensure accessibility and exercise of rights assuming that they have the capacity to do so.<sup>83</sup></li><li>- incorporate resources to improve the possibilities of vulnerable groups to enforce accessible and simple rights with celerity through different mechanisms (e.g. specialized units, toll-free telephone numbers, alternative dispute resolution mechanisms).<sup>84</sup></li><li>- overcome “practical” and “psychological barriers” encountered by Victims that are assumed to be needed in order to demand rights enforcement.<sup>85</sup></li><li>- improve equal enforcement of rights by implementing strategies meant for that purpose (e.g. decentralizing units to reach every jurisdiction).<sup>86</sup></li><li>- understand how they perceive their role in the enforcement of rights, and how they perceive the judicial system as an institution capable of finding a remedy for Victims assuming that judicial systems are not fully capable of enforcing remedies especially in domestic violence cases.<sup>87</sup></li></ul>

Table 6. Theoretical Expectations Chapter 4

2.1.2.3. *Individuals*

Chapter 5 applies the LE framework to Victims who accessed the PPO. Victims represent an example of a vulnerable group that accessed the judicial system after the submission of criminal or civil complaints. Chapter 5 focuses on Victims who through

<sup>80</sup> Ibid., 23, 31; Burton, “Domestic Abuse. Literature Review,” 4, 19.

<sup>81</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 30–32.

<sup>82</sup> Inspired by the concept of “subject legal empowerment” yet applied to providers instead of users as defined by Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment.”

<sup>83</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 24.

<sup>84</sup> Ibid., 25–27, 36; Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 48.

<sup>85</sup> Burton, “Domestic Abuse. Literature Review,” 18.

<sup>86</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 26.

<sup>87</sup> General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 124.

their complaints reached the PPO. The analysis in chapter 5 derives from the voices of Victims, and it is therefore exploratory in nature. Similar to chapter 4, the elements addressed under each component in chapter 5 derive from fieldwork. The LE framework was used as a starting point to design the methods used to collect data and to provide main codes to start analysing data. The table below shows how the LE framework is adjusted to individuals, namely Victims.

<b>Victims</b>	<b>Rights Enhancement</b>
	<b>Rights Awareness</b>
	<b>Rights Enablement</b>
	<b>Rights Enforcement</b>

Table 7. LE Framework as Applied to Individuals

Rights enhancement, within chapter 5, analyses individual developments experienced by Victims when they obtain access to justice to solve their problems and the capacity they gain to participate in the policy process. Rights awareness analyses, in chapter 5, the understanding that Victims gain about their rights as they transit through Legal Organizations. Rights enablement in chapter 5 studies how Victims become able to access Legal Organizations and what tools they use to exercise rights. This component looks at the options Victims use to overcome the bureaucratic and economic barriers to access to the judicial system and to sustain their complaints.<sup>88</sup> Finally, rights enforcement in chapter 5 analyses the mechanisms that Victims ultimately use to enforce their rights. The analysis is enriched with findings from fieldwork performed in two stages within a six-month interval in order to capture the LE process that Victims experience.

LE identifies people as capable of gaining “legal power” and solving problems by means of access to justice. The design of chapter 5 starts from the analysis of theories that address the presence of certain elements that can contribute to the LE of Victims. The table below highlights a number of theoretical expectations that relate to chapter 5.

<i>Rights Enhancement</i>	domestic violence is associated with a gender issue affecting mostly women. <sup>89</sup>
Understands when Victims become able to access,	minority ethnic groups experience particular difficulties to obtain access to justice and to seek help. <sup>90</sup>
	Victims who access the PPO seek legal remedies though it is unclear whether Victims perceive their problems as legal problems when they obtain access to justice. <sup>91</sup>

<sup>88</sup> “Legal Empowerment of the Poor: From Concepts to Assessment,” 11.

<sup>89</sup> e.g. Burton, “Domestic Abuse. Literature Review.”

<sup>90</sup> Ibid., 3, 12.

<sup>91</sup> Macdonald, Roderick A., “Access to Civil Justice,” 515.

considering that	<ul style="list-style-type: none"> <li>Victims might have developed motivations to approach Legal Organizations.<sup>92</sup></li> <li>Victims who access the PPO need to have overcome certain capacities because “the effect of violence is said to destroy a person’s capacity to act as an agent and, consequently to access legal redress for everyday civil-justice claims.”<sup>93</sup></li> <li>Victims who access the PPO may be knowledgeable of legal provisions<sup>94</sup> and perceive the law as a resource to gain power to solve problems.<sup>95</sup></li> <li>“subjective self-belief [of Victims to be able to] solve problems of a legal nature” may contribute to conflict resolution.<sup>96</sup></li> <li>Victims may develop strategies to overcome obstacles to LE (e.g. financial capacity, experience with the judicial system, economic dependency, distrust of the judicial system).</li> <li>Victims may have the capacity to participate in the policy process and express their legal needs.<sup>97</sup></li> </ul>
<i>Rights Awareness</i> Analyses whether Victims understand, considering that	<ul style="list-style-type: none"> <li>legal terminology and complexities of the judicial system may be obstacles.<sup>98</sup></li> <li>legal understanding is a result of legal provisions, campaigns, or other resources (e.g. TV, Internet) that transmit rights awareness because it is assumed that only those trained in law are capable of understanding.<sup>99</sup></li> <li>legal understanding might lead to sustainability of legal procedures.<sup>100</sup></li> <li>access to Legal Organizations may increase the capacity of Victims to consciously choose amongst options and participate in the solutions, perceiving rights as actionable.<sup>101</sup></li> <li>Victims can benefit “from the free flow of information, open debate, and new ideas”<sup>102</sup> only when they are empowered.</li> </ul>

<sup>92</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10.

<sup>93</sup> Macdonald, Roderick A., “Access to Civil Justice,” 513–14; Knaut and Ramírez, “Family Violence and Child Abuse in Latin America and the Caribbean”; Morrison and Biehl, *Too Close to Home*, 18–19.

<sup>94</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 35.

<sup>95</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 28–29.

<sup>96</sup> Ibid., 4–8, 22, the authors create the concept of “subjective legal empowerment” and define it by stating that “a person is LE when she believes that she can cope with immediate or likely problems using the law.”

<sup>97</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 35.

<sup>98</sup> Ibid.; Macdonald, Roderick A., “Access to Civil Justice,” 509.

<sup>99</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 17–18.

<sup>100</sup> Ibid., 17.

<sup>101</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 3, 7.

<sup>102</sup> Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone. Vol I,” 4.

<i>Rights Enablement</i>	Victims who access the PPO might have sought other means of help. <sup>103</sup>
Elements that allow Victims to exercise rights, considering that	judicial systems are accessible when perceived as reasonable in cost and length, and as capable of delivering just results and fair treatment, and when delivering certainty and clarity on the steps to follow. <sup>104</sup>
	access to justice can assist to place Victims on a par with the accused assuming that legal provisions and Legal Organizations can contribute to equalize unequal power relations. <sup>105</sup>
	access points are important because they are the first step into the judicial system. <sup>106</sup>
	Victims may use other resources, besides the judicial system, because previous studies indicate that in developing countries people approach other resources before approaching the courts. <sup>107</sup>
	other resources, besides the judicial system, can give Victims power to solve their legal problems (e.g. money, lawyers, legal information, lack of fear, accessibility, and trust in Legal Organizations). <sup>108</sup>
	uncertainty of the outcome of complaints can be an obstacle to access to justice. <sup>109</sup>
	Victims may encounter obstacles to exercising rights and to using tools to overcome the obstacles (e.g. fear of the courts), <sup>110</sup> and previous studies assess that “fear [i.e. in general] is the first factor which affects the ability of the affected person to look for and apply solutions to the problems.” <sup>111</sup>
	Victims are willing to give their conflicts away and the presence of lawyers may reduce their participation, <sup>112</sup> though Victims are able to participate when options are given by providers. <sup>113</sup>
	Victims may feel disempowered when they do not have possibilities to participate in communications made amongst providers. <sup>114</sup>

<sup>103</sup> Macdonald, Roderick A., “Access to Civil Justice,” 516–17.

<sup>104</sup> Ibid., 509.

<sup>105</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 4.

<sup>106</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 21–22.

<sup>107</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 25, footnote 70.

<sup>108</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 23–27; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 20.

<sup>109</sup> Macdonald, Roderick A., “Access to Civil Justice,” 511–12.

<sup>110</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 20–21; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10–11.

<sup>111</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 26.

<sup>112</sup> Christie, “Conflicts as Property,” 6.

<sup>113</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 10–11.

<sup>114</sup> Burton, “Domestic Abuse. Literature Review,” 20; this study referred particularly to the communication between solicitors and the advocate.



	Victims who experience mediation can view it as beneficial if parties have an interest in finding a solution and if they can freely participate in that search. <sup>115</sup>
	Considering emotional injuries of Victims by providers is recommended for conflict resolution (analysed in this study with the incorporation of multidisciplinary assistance). <sup>116</sup>
<i>Rights</i>	access to justice may allow the achievement of just remedies. <sup>117</sup>
<i>Enforcement</i>	preventive orders may be unhelpful for some women and beneficial for others (e.g. cessation of the abuse, a feeling of protection). <sup>118</sup>
<i>Elements that assist Victims, considering that</i>	Victims encounter obstacles to exercising rights. <sup>119</sup> Victims may use other resources, besides the judicial system, to enforce rights (e.g. an ombudsman). <sup>120</sup>

Table 8. Theoretical Expectations Chapter 5

2.2. Methodology

This study relies on qualitative methods to answer the research questions.<sup>121</sup> Interviews, observations, and document analysis allow for an in-depth understanding of experiences and behaviours of providers and users of the judicial system under the LE framework. These methods further allow for an understanding of a certain phenomenon in the eyes of different actors<sup>122</sup> and have been used to obtain “in-depth information about behaviour, decision-making and motivation, permitting a more detailed tracing of the process through which disputes were handled.”<sup>123</sup>

This study uses qualitative methods to describe, explain, and explore access to justice and LE. The descriptive approach is used to analyse legal provisions and to include descriptions of elements that are present in LE at its legal, organizational, and individual levels. The explanatory approach is given every time that the study relies on certain expectations that derive from theories. This deductive approach is used to

<sup>115</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 9, 14.

<sup>116</sup> Burton, “Domestic Abuse. Literature Review,” 11.

<sup>117</sup> Macdonald, Roderick A., “Access to Civil Justice,” 507.

<sup>118</sup> Burton, “Domestic Abuse. Literature Review,” 20.

<sup>119</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 24.

<sup>120</sup> Ibid., 36–37.

<sup>121</sup> For qualitative techniques, this study relied primarily on the following sources: Baxter and Jack, “Qualitative Case Study Methodology”; Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*; Graham R. Gibbs, “Research Methods in the Social Sciences with a Particular Focus on Qualitative Research”; Hesse-Biber and Leavy, *The Practice of Qualitative Research*; Kvale, *Doing Interviews*; Rubin and Rubin, *Qualitative Interviewing*; Webley, Lisa, “Qualitative Approaches to Empirical Legal Research”; Wolcott, *Writing up Qualitative Research*; Yin, *Case Study Research Design and Methods*.

<sup>122</sup> Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 6–7, 33, and 42.

<sup>123</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 18, see also, Genn, “Hazel Genn and Paths to Justice.”

broadly identify elements that served as a starting point for the collection and analysis of data. The exploratory approach complements the explanatory approach and is used to find new elements present in the relation between access to justice and LE.

### 2.2.1. Sample

Three main groups of data source were collected and analysed to understand the research questions of this study. The data collection process in this qualitative study was enriched as data was collected and lessons were learned from that data.<sup>124</sup> Primarily, the study comprehends theoretical sources, legal sources, and empirical sources. Each of these sources became more relevant in different chapters and they are mostly linked to the different levels. Therefore, chapter 3 relies mostly on legal sources, and chapters 4 and 5 rely mostly on empirical sources. All chapters work with theoretical sources that serve primarily as a point of departure for this study.

#### 2.2.1.1. Theoretical Sources

Theoretical sources consist of recent studies on LE and studies that reveal the results of national surveys undertaken to understand access to justice in given societies. Moreover, theoretical sources are used to understand the value of Legal Organizations in society, and writings from legal scholars are used to understand criminal law and its function in society, access to justice, conflict resolution, democratic participation, and gender violence. Theoretical sources are used in chapter 6 of this study as a means by which to validate some of the lessons learned.

#### 2.2.1.2. Legal Sources

Legal provisions served as main sources, especially for chapter 3. Legal sources include constitutional provisions, human rights treaties, federal law, City law, and internal regulations of the PPO, all enacted since 1994. Occasionally, and to allow for a better comparison, the time frame is extended. Legal scholarly work is often used to understand the letter of the law. Moreover, some key court decisions are incorporated in the study together with records of the debates undertaken during constitutional conventions.

#### 2.2.1.3. Empirical Sources

Empirical sources consist of interviews performed with four groups. All groups, with the exception of Victims, were selected based on their experience and role within the judicial system (i.e. purposive sampling).<sup>125</sup>

Key civil servants are actors within the PPO in charge of the design, implementation, and evaluation of public policies. The selection of the sample was based on the type of appointment inside the PPO, and the reduced number of key civil servants allowed for a composition that includes the total population. The aim of the selection was to

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<sup>124</sup> Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 47.

<sup>125</sup> Rudestam and Newton, *Surviving Your Dissertation: A Comprehensive Guide to Content and Process*, 106–9.

understand the strategy used in designing the PPO, and the everyday activity of the different divisions inside the Access to Justice and Human Rights General Secretariat. Key civil servants include (i) the attorney general, (ii) Access to Justice and Human Rights General Secretariat (Access General Secretariat), and (iii) the directors of each of the divisions coordinated by the Access General Secretariat (OFAVyT); Access to Justice, and the Unit of Orientation and Complaints (UOD); and the Reception of Complaints Office.

Justice providers are actors within the PPO and the judicial system with the capacity to enhance communication, investigate cases, enforce actions, and deliver justice. Justice providers include specialized prosecutors who deal with domestic violence cases (prosecutors), mediators, and judges. Prosecutors respond to the attorney general, mediators respond to the public defender, and judges respond to the judicial system. These actors, therefore, contemplate the interplay of three Legal Organizations, since each of these actors responds to a different organ.

The selection of the sample of prosecutors was based on their appointment as specialized prosecutors for domestic violence cases. The reduced number of specialized prosecutors allowed for a sample comprising the total population. Mediators rotate amongst the five decentralized units of the PPO. The selection consists of a convenience sample based on mediators who were on service during the dates of interviewing Victims at the South unit of the PPO and who were introduced by one key civil servant. A convenience sample is appropriate because interviews were meant to understand experiences of daily activities and there was no need to select a sample to control for particular interests. One exploratory interview was conducted with a mediator during the morning shift and during the first period.

During the third period, two group interviews were performed with two pairs of mediators, one during the morning shift and another during the afternoon shift. The first pair was made up of two mediators with five to ten years of experience, and the other pair of mediators with more than ten years of experience. Two criminal judges were interviewed during period three of data collection. The selection of the judges is based on a convenience sample constructed from recommendations by one key civil servant. The sample is therefore not representative of the entire population of judges, but assists in understanding how judges perceive developments in legal provisions and Legal Organizations. Moreover, in view of the topic, there is no reason to assume that judges would have an interest in hiding or guiding answers, and therefore the data collected can be used as a good approximation of perceptions of other judges dealing with domestic violence cases. An Argentine civil judge specialized in domestic violence was also interviewed. This judge was selected due to his expertise and commitment to access to justice, and to the issue of gender and domestic violence both inside and outside the courtroom.

Service providers are actors within the PPO who assist Victims on a daily basis. Service providers compose the multidisciplinary group that works at the OFAVyT, a unit created to assist victims (and witnesses). The multidisciplinary group is composed primarily of psychologists, lawyers, and social workers. All service providers were sent

an online interview and asked to participate voluntarily (annex 6). Voluntary samples are assumed to comprise individuals with a special interest in the topic. For the purpose of this study, the special interest does not bias results though the compliance may be a reflection of the compromise of the group to the subject. The sample includes members of the multidisciplinary group (i.e. OFAVyT), which is composed of sixteen psychologists, six lawyers, three bachelor students (either in law or psychology), one social worker, and one professor of philosophy.

Victims who submitted complaints that fell under the crime of domestic violence were interviewed for this study.<sup>126</sup> The sample was selected randomly to include representatives of the Victims who approach the PPO without controlling for the variation in attributes of Victims (e.g. gender, age, education, income). Therefore, the sample can be considered to represent the population that visits the PPO. Interviews were held during a research stay of 43 days as regards every Victim who had an appointment with OFAVyT and who agreed to participate in the study. An equal amount of time was spent in each unit, covering the five days of the working week at each unit. Victims were interviewed twice, with a six-month interval in between. Fifty-four Victims compose the sample, of which thirty-one were interviewed twice. Further characteristics of the sample are presented in chapter 5 of this study (5.2.).

### 2.2.2. Methods

Researchers play an important role in the instrumentation of qualitative studies. However, the subjectivity of results was reduced in this study by using proper methods, procuring open-ended, non-leading questions and triangulation of data.<sup>127</sup> Different methods were used to gather data from different interviewees,<sup>128</sup> considering the best options available to learn from their experiences. Interviewees became the source of data for this study due to their capacity as experts in the topics inquired into,<sup>129</sup> and were selected because they hold the needed information to answer the research questions.

Exploratory interviewing and face-to-face, semi-structured in-depth interviews were used to interview key civil servants (annex 4).<sup>130</sup> The interviews were recorded and transcribed, and they lasted approximately sixty to ninety minutes each.<sup>131</sup> The

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<sup>126</sup> Domestic violence cases are crimes of “threats” and contraventions of “harassment” committed against a person with whom an intimate relation exists or by another family member. See, Congreso de la Nación Argentina, *Código Penal de la Nación*, art 149bis; Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 52; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*.

<sup>127</sup> e.g. Padgett, *Qualitative Methods in Social Work Research*, chap. 8.

<sup>128</sup> Webley, Lisa, “Qualitative Approaches to Empirical Legal Research,” 936–38.

<sup>129</sup> Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 42.

<sup>130</sup> For interviewing techniques, this study relied primarily on the following sources: Kvale, *Doing Interviews*; Graham R. Gibbs, “Research Interviewing Part 3”; Rubin and Rubin, *Qualitative Interviewing*; Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*; Padgett, *Qualitative Methods in Social Work Research*, chap. 6.

<sup>131</sup> Graham R. Gibbs, “Research Interviewing Part 3”; Graham R. Gibbs, “How to Do a Research Interview”; Rubin and Rubin, *Qualitative Interviewing*; Yin, *Case Study Research Design and Methods*.

interviews took place at the working space of the key civil servant and transcripts were complemented with information from reports and internal regulations of the PPO.

Face-to-face, semi-structured in-depth interviews were used to collect data from justice providers (annex 5). Responsive interviewing techniques suggested by Rubin and Rubin were used for this group.<sup>132</sup> For example, in the case of prosecutors of the specialized prosecutor units, interviews started with one (out of four) of the prosecutors and continued by asking the subsequent prosecutors questions that built on the previous interviews.<sup>133</sup> In addition, prior knowledge was gathered on the professional experience of prosecutors, and hence it was possible to adjust questions to address aspects in which the prior knowledge indicated that a prosecutor was specifically knowledgeable. An identical technique was used with mediators and judges, with the addition of observation notes and mediation minutes, and an e-mail interview with one of the three judges.

Two sets of interviews were conducted at different moments of time to collect data from service providers at OFAVyT. During the first research stay, exploratory interviewing techniques were used<sup>134</sup> together with observations at the units of OFAVyT that are inside of the five PPO units (4.2.2.). This approach helped to develop the interview guide for Victims (annex 8) and to design the online interview that was then sent to OFAVyT (annex 6). The questions of the online interview were piloted with two legal practitioners, a researcher on LE and two members of OFAVyT. The sample of service providers received an online interview, which was sent to every member of OFAVyT. These were originally sent on May 9, 2013 using google.docs, and, after being forwarded twice, only eight responses were submitted by service providers. Hard copies were distributed during the second period in June 2013 to increase the number of responses. This new period resulted in eighteen additional responses, providing a total sample of twenty-six responses (out of approximately fifty-nine service providers). This last indicates a 44 per cent response rate.

Victims were interviewed at two moments of time within a six-month period. The aim was to learn from their experiences; therefore, special care was needed to avoid leading the conversations, and responsive interviewing techniques were used.<sup>135</sup> However, firstly, observations were made during meetings between OFAVyT and Victims, to understand the characteristics and vocabulary used by Victims and the information that could already be taken by being present at those meetings. A questionnaire was created with this information containing closed-ended questions and a set of open-ended questions to be used in the first in-depth interviews.

In-depth interviews with open-ended questions were used during the second period of interviews, together with a questionnaire that repeated the structure of the one conducted during the first period. A set of specific questions was also developed for each Victim with aspects to follow-up from first interviews. Lastly, the previously

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<sup>132</sup> Rubin and Rubin, *Qualitative Interviewing*.

<sup>133</sup> Ibid., 108–28.

<sup>134</sup> Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*, 65–80.

<sup>135</sup> Rubin and Rubin, *Qualitative Interviewing*, 152–200.

collected data were complemented with legal documents available in the electronic file at the PPO available for each Victim. These documents showed the actions taken in each case inside the judicial system and the documents that had been submitted by the parties. All first interviews with Victims were conducted face-to-face and lasted from thirty to forty minutes each.

Second interviews were conducted mainly over the telephone, because already after the first day of fieldwork it was clear that performing a second interview face-to-face would be difficult due to the need for Victims to commute to the PPO. Therefore, the research design of this study was adapted, and interviews were conducted over the telephone. A reduced list of questions was asked over the telephone to ensure the collection of basic data from Victims who agreed to meet face-to-face. Thirty-one out of the fifty-four Victims who agreed to first interviews answered second interviews. Further details on the characteristics of the sample are given under chapter 5 of this study. For all interviews and observations, fieldwork notes were used to track contextual information, perceptions, and main lessons learned. Fieldwork notes were used to prepare for following interviews, and to analyse and triangulate data.

### 2.2.3. Data Collection

The data collection took place during three moments in time. This technique was inspired by a similar method used in a previous study by Walker,<sup>136</sup> and was used to track the experiences of Victims before and while they had access to justice. Having a control group was not possible in this study due to the difficulties in having a sample of Victims who had not submitted complaints. Therefore, the study selected the before-and-after technique in order to be able to capture from the Victims who accessed the PPO the personal development they went through before deciding to submit complaints.

First interviews were exploratory, and second interviews built on the information collected in first interviews. All means of data collection in the City were done in Spanish.

#### 2.2.3.1. *Period One (10.12.2012 – 30.01.2013)*

This period was meant to understand the set-up of the PPO and its strategy towards ensuring access to justice and conflict resolution in the City. During this period the research design for this study was also improved. For this purpose the following activities were performed: (a) three exploratory interviews with service providers from OFAVyT; (b) one exploratory interview with a mediator; (c) semi-structured interviews with the divisions that are part of the Access General Secretariat of the PPO;<sup>137</sup> (d) observations during meetings held by service providers of OFAVyT with Victims; (e) observations in a domestic violence mediation session.

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<sup>136</sup> Walker et al., “The Family Advice and Information Service: A Changing Role for Family Lawyers in England and Wales? Final Evaluation Report,” 23–29.

<sup>137</sup> i.e. OFAVyT; Access to Justice and UODs; and Reception of Complaints Office.

The activities resulted in the adjustment of the research design to collect further data, from providers, Victims, and documents. The interviews assisted in the design of the fieldwork period two and three and in the collection of seminal legal provisions analysed in chapter 3. Moreover, an online interview for service providers of OFAVyT was created. The interview had three parts. Part one provided an introduction to this study and requested consent for participation. Part two requested personal information on the interviewee, such as age, years of experience in their profession, and time working for OFAVyT. Part three included two sections.

The first section focused on the conceptual aspect of the main vocabulary used throughout the interview (i.e. victim, without being limited to domestic violence; conflict; domestic violence; empowerment; access to justice), and allowed improving the understanding of the conceptual framework. The second section consisted of twenty-eight questions, most being closed-ended and followed up with open-ended and explanatory questions of the selected options. There were three groups of questions within the second section. The first group of questions aimed to understand the advantages of the structure of OFAVyT. The second group of questions aimed to understand how service providers perceived the judicial system as a means by which to resolve conflicts. The third group of questions dealt with the perception service providers had of the Victims they assisted (annex 6).

### *2.3.3.2. Period Two (27.06.2013 – 15.08.2013)*

The main purpose of this fieldwork period was to interview Victims. In order to control for extraordinary factors, during this fieldwork period a minimum of seven days were spent at each of the five OFAVyT units during working hours (8:00 to 20:00). The judicial holiday took place from July 15, 2013 to July 24, 2013 and affected courts though not the PPO. Prosecutors did not attend trial during that holiday period, and their daily activities were reduced. Furthermore, since the holiday is already entrenched in the local judicial culture, the workload still diminished during this period. Consequently, the fieldwork period at the South unit was prolonged. The periods spent at each unit, during 2013, are indicated below:

- 27-28.06 & 15-24.07: OFAVyT South unit (8 interviews)
- 03.07, 05.07 & 08-12.07: OFAVyT Southeast unit (12 interviews)
- 30.07 to 06.08: OFAVyT North unit (14 interviews)
- 04.07 & 07-14.08: OFAVyT East unit (12 interviews)
- 15-23.08: OFAVyT West unit (8 interviews)

Pilots were done during the last days of June and the first days of August 2013. However, due to the techniques used to interview and the already rich data collected during pilots, they were included in the final sample.<sup>138</sup>

All Victims who entered the unit, either by appointment made by OFAVyT or by direct referral made by prosecutors to OFAVyT, were interviewed during period two. Victims were given an explanation of the purpose of this study and they were asked

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<sup>138</sup> Rubin and Rubin, *Qualitative Interviewing*, 36–38.

for voluntary participation, following ethical protocol. Interviews were conducted with Victims who agreed to participate. Three Victims declined participation and fifty-four Victims were interviewed during this period.

A tripartite design was used to collect data from Victims.<sup>139</sup> The first part started when Victims arrived at OFAVyT and were approached by the researcher who conducted this study (henceforth, the Researcher). Victims were then given an explanation about the purpose of this study, and they were asked for their consent to participate in this study. Victims who agreed were provided with a questionnaire to complete autonomously while waiting to be assisted by OFAVyT (annex 7).

In some cases, and when Victims faced difficulties with reading the questionnaire, questions were asked orally and the questionnaires were completed in front of the Victims. Questionnaires helped to contextualize the data and to bring information to the interviews. Each questionnaire was divided into three sections. First, it explained the purpose of this study and asked for consent to participate. Second, it included eight closed-ended questions, asking about how and by whom Victims came to know about OFAVyT. If this was their first time at OFAVyT, a question aimed to identify their problem, and to know whether they had any other problems. Further, they were asked to indicate to what extent they trusted that they would find a solution for their problems, which solutions they were looking for their problems, and a scale to measure to what extent they thought they could perform certain activities related to their involvement in the legal procedure. Third, the questionnaire asked for personal information about the Victims, i.e. where they were born, age, level of education, family composition, employment situation, eligibility for social welfare, neighbourhood, ownership of property, number of people living in the household, number of rooms in the house, and income for the family group.

The second part used to collect data followed after the questionnaire was completed, hence when Victims had the interview with OFAVyT. Victims were asked whether the Researcher could be present during their interviews in order to learn about the facts, and to avoid asking questions that were already covered. These meetings, held by OFAVyT, lasted approximately thirty to forty minutes each. The Researcher was limited to observing and taking notes. Those notes were used to create follow-up questions and gather factual information. The presence of the Researcher during these meetings was meant to avoid saturating and re-victimizing the Victims with repetition of questions and lengthy interviews.

The third part used to collect data followed the meetings held by OFAVyT. Then, the Researcher remained in the room with the Victims and asked for consent to stay for an additional thirty minutes. Victims were asked for their consent to record the conversations. The interviews were conducted in Spanish, using responsive interviewing techniques and an interview guide (annex 8).<sup>140</sup> Interviews lasted approximately thirty to forty minutes each. The questions in that third part intended to gather data with questions meant to understand: (1) the options considered by

<sup>139</sup> This design was sometimes adapted to the needs and characteristics of interviewees.

<sup>140</sup> Rubin and Rubin, *Qualitative Interviewing*, 30–38.



Victims and who helped them learn about these options and the paths they followed, together with the determinant points of decisions towards change; (2) how much Victims knew about their rights and ways in which to enforce them; (3) the perception of the Victims of the assistance they received; (4) the consequences of the assistance, first notions of what happened with the assistance received, and in which aspect of life Victims made a change; (5) the extent to which Victims translated their problems into legal problems or into issues with legal implications; and (6) where the awareness of options led Victims and how they perceived their role in solving their problems.

A joint in-depth interview was conducted during this second period with the General Prosecutor and with the head of the Access General Secretariat. That interview aimed to collect data about the set-up and operation of the PPO.

#### *2.3.3.3. Period Three (14.01.2014 – 28.02.2014)*

This fieldwork stay took place six months after period two. The urgency of domestic violence cases should provide a legal solution within that time frame.

Victims who were interviewed six months before, and who had agreed to participate in second interviews, were contacted. The contact was made by telephone, and the original strategy was to set up face-to-face meetings again at OFAVyT. This original strategy worked for few interviewees, however. In-depth interviews with open-ended questions were conducted together with a short questionnaire that intended to capture information on work, living conditions, consumption level of daily goods, activities, and social life to compare it to the information collected in first interviews (annex 9).

Thirty-one of the fifty-four Victims who were contacted for second interviews responded. Of those thirty-one Victims, eight agreed to do it face-to-face, twenty-one to do it over the telephone, and two via e-mail. Of the eight Victims who agreed to do it face-to-face, four agreed to meet at the same location where first interviews had taken place, while the other four Victims proposed meeting close to their place of work. These interviews lasted on average eighty minutes and were taped, with the exception of one interview in which the Victim did not consent to being recorded. The twenty-one interviews conducted over the telephone lasted on average forty minutes, and the conversations were transcribed by the Researcher while taking place.<sup>141</sup> Limited information was collected from interviews done via e-mail. On average, a three-page document response was gathered, though the main perception was collected since questions were directed to the most relevant aspects.

Three Victims answered telephone calls and declined to participate in second interviews. In addition, thirteen Victims provided an evasive answer, since they stated they wanted to participate but never did. Lastly, the Researcher did not succeed in contacting seven Victims.

Victims were called at least six times on different days of the week and times of day when trying to schedule a second contact. Some Victims never attended second

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<sup>141</sup> The Researcher used a headset so as to be able to type while speaking, being thus able to follow the conversations with limited interruption.

interviews, even when a previous appointment had been made. Many factors played a role when Victims had to comply with appointments (regardless whether appointments were set to be face-to-face, by telephone, or by e-mail), and these data are analysed in chapter 5.

The Researcher perceived during period three that it was important to have a better understanding of other relevant actors inside the judicial system. Consequently, the following justice providers were added to the sample: four prosecutors from the specialized prosecution unit, four mediators working at the units of the PPO, and three judges (one interviewed during the final stage, and two others interviewed afterwards). Justice providers were asked about their experience with assisting Victims and their perception of how Victims can resolve conflicts when they obtain access to justice. The interview guide for justice providers was adjusted to each interviewee.

Moreover, legal documents of relevance in the cases of Victims were collected during period three. Data collected from Victims was organized in individual folders containing in-depth interview(s), fieldwork notes, and legal documents.

#### *2.3.3.4. Comparative Data*

This study makes use of data collected by experts from Australia, Canada, France, and the United States.<sup>142</sup> The justification for the selection of these interviewees was to obtain lessons from experts working in some of the jurisdictions that have shown compromise in the empirical understanding of access to justice (e.g. through national surveys, research centres).<sup>143</sup> France is an exception and was selected based on its tradition in the fight for the rights of women through bottom-up movements and in the incorporation of the Ministry for Women to its governmental structure.

This study does not present a comparative case study though these data serve to provide a context for the findings. Comparative notes are made in the subsequent chapters and the data collected serve as a complement to the findings in the City by considering practices from different jurisdictions towards access to justice, serving also as a reminder of further potential options.

The data collected in the US comes from one in-depth interview performed on November 28, 2013 with a legal aid lawyer specialist in domestic violence. In France, an in-depth interview was performed on March 24, 2014 with a representative of the Ministry for Women, and on March 26, 2014 a visit was made to the main NGO assisting Victims. In Canada, three in-depth interviews were conducted on July 23 and 24, 2014. One interview was done with a legal aid lawyer specialist in Legal Organizations and in capacity-building strategies, another interview was held with service providers from the Witness and Victims Assistance Programme, and lastly a joint interview was performed with a lawyer who represents a Legal Organization in Toronto and a representative of a NGO working for Victims and coordinating their

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<sup>142</sup> It should be repeated that the Netherlands and the UK have also shown early compromise in the empirical understanding of access to justice.

<sup>143</sup> Macdonald, Roderick A., "Access to Civil Justice," 498–501.

efforts with the Legal Organization. Finally, one interview was conducted on November 29, 2014 in Australia with a Legal Organization specialized in domestic violence.

#### 2.2.4. Data Analysis and Computer Programme

Data analyses followed a content analysis approach in this study.<sup>144</sup> Theoretical sources, legal sources, and empirical sources were thematically coded by pre-selected categories and categories that were created during the process of coding.<sup>145</sup> Legal sources followed a deductive approach and the themes were assigned before coding sources from the components of the LE framework and the type of legal sources. Legal sources were analysed using document analysis techniques and most of the time following an order of hierarchy: first constitutional and international legal provisions, and lastly City legal provisions.<sup>146</sup> Legal sources were either coded manually, when working with hard copies, or coded in Word Perfect when working with electronic copies.

Theoretical sources were coded in a similar way to legal provisions, depending on whether the source was a hard or electronic copy. Theoretical sources were most of the time looked upon specifically to broaden the understanding of the letter of the law.

Empirical sources were thematically coded by pre-selected categories and categories that were created during the process of coding.<sup>147</sup> Therefore, the study followed a deductive approach at the beginning, starting with main codes that derived from the matrixes (annexes 1–3), followed by an inductive approach that resulted in new codes that derived from the data. Moreover, the analysis of data considered the importance of certain words in the discourse of interviewees, the interaction of different factors as presented by interviewees, the interaction and contradictions amongst those factors, and the enumeration of elements considered to be relevant for certain topics. NVivo was used to systematically analyse the data and served as a tool to retrieve different codes and analyse them at different stages in the study. Furthermore, personal attributes (e.g. age, place of birth) were linked to empirical sources in order to cross the findings with the characteristics of the interviewees.

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<sup>144</sup> For coding and data analysis, this study relied primarily on the following sources: Bryman, *Social Research Methods*; Graham R. Gibbs, “Research Methods in the Social Sciences with a Particular Focus on Qualitative Research”; King, Keohane, and Verba, *Designing Social Inquiry*; Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*; Rubin and Rubin, *Qualitative Interviewing*; Wolcott, *Writing up Qualitative Research*; Yin, *Case Study Research Design and Methods*.

<sup>145</sup> Webley, Lisa, “Qualitative Approaches to Empirical Legal Research,” 927–29.

<sup>146</sup> On document analysis, see e.g. Bowen, “Document Analysis as a Qualitative Research Method.”

<sup>147</sup> Webley, Lisa, “Qualitative Approaches to Empirical Legal Research,” 941–42.

### 2.2.5. Validity and Reliability

Possible ambiguous findings were reduced by using triangulation techniques between different sources of data.<sup>148</sup> The three fieldwork periods in which to collect data assisted in validating the information. In addition, during those periods the Researcher undertook most of the activities at the PPO. This allowed for a deep understanding of the dynamics taking place at the units.<sup>149</sup> Moreover, the prolonged contact with the same Victim in two different moments of time also assisted in validating data. Lastly, a visit to Domestic Violence Office (OVD) was made in order to understand better the composition of that Legal Organization in view of the recurrence with which Victims make use of that resource. An in-depth interview was conducted with a key civil servant within OVD. This also assisted in a better understanding of the information provided by Victims and by the providers at the PPO. The analysis of data already collected by the PPO also helped to assemble personal, demographic, and economic data on Victims, together with reports made by OFAVyT. Access to legal documents reflecting actions taken by Victims after making complaints helped to construct an overall outline of occurrences on each case. Additionally, the analysis of legal documents created in each case helped to get perspective on what was done by the PPO and on the intervention of other organizations in the complaints of Victims. This information was helpful in understanding the dynamics of cases, in building second interviews for Victims, and in corroborating factual information.

The internal validity and reliability of this study is described in the previous sub-sections of this chapter.<sup>150</sup> This study took care in respect of the reliability by referring to all interviews in detail. Hence, it is possible to observe throughout the chapters references indicating the sources from which information was extracted, and NVivo helped to facilitate this process. Further characteristics of the sources of data are described under each corresponding chapter. In addition, the main findings were shared in the context of an oral presentation at the PPO attended by a key civil servant and service providers.<sup>151</sup>

This study, in addition, looks into the relation between the findings and previous studies to assess the external validity of the findings.<sup>152</sup> External validity is not conclusive in this study since the main purpose is to bring to light an unexplored phenomenon. However, in chapter 6 the study compares the findings with seminal works, such as the study by Genn.

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<sup>148</sup> Triangulation is a technique used to increase the validity of findings by “checking multiple sources.” See e.g. Wolcott, *Writing up Qualitative Research*, 26; and, Padgett, *Qualitative Methods in Social Work Research*, chap. 8.

<sup>149</sup> For observation techniques, this study relied primarily on the following sources: Graham R. Gibbs, “Research Methods in the Social Sciences with a Particular Focus on Qualitative Research”; Padgett, *Qualitative Methods in Social Work Research* chap. 5.

<sup>150</sup> To ensure reliability, this study relied primarily on the following source: Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 53.

<sup>151</sup> The oral presentation took place on July 18, 2016.

<sup>152</sup> Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 50.

### 2.2.6. Ethical Considerations

An agreement of collaboration was signed between Maastricht Graduate School of Governance and the PPO on August 31, 2012. Section 9 of the agreement deals with privacy and protection of personal data, and states in relation to ethical considerations that,

the information that parties may disclose for the achievement of this Specific Agreement, as well as that revealed as a result of its execution, shall be confidential; and the Argentine law on Personal Data Protection, the law of the City of Buenos Aires, and the Code of Conduct of Researchers of the Netherlands, should be especially complied [with].<sup>153</sup>

All interviewees were informed of the objectives of the study and were asked for their consent to participate. The Researcher introduced herself and explained the purpose and the institutional context of the study. Interviewees were informed of confidentiality rules and received an explanation about the exclusive use of the data for the purpose of this study. The anonymity of interviewees is preserved with the elimination of names and the allocation of codes composed of letters that abbreviate the identity of the actors (e.g. “V” for Victim, KCS for key civil servant, SP for service provider) followed by a number to distinguish amongst different actors (e.g. V001). A further detailed explanation is provided in each chapter.

The vulnerable condition and stressful situation of Victims demanded special attention. Victims were reminded and asked for consent at each period of the interview process. Consequently, when working with the first questionnaires the whole process of interviews was explained to the Victims and they were asked for their consent (annex 7). Then, when the Researcher entered the room for the meetings with OFAVyT, Victims were again asked whether they consented to the passive participation of the Researcher. Victims finally were asked again for consent to participate in the interviews with the Researcher. When these first interviews were completed, Victims were asked whether they were willing to participate in the second interviews within six months. All interviewed Victims agreed to be interviewed again within a six-month period and left their contact information. While undertaking second contacts, Victims were reminded again of the purpose of the study and asked again for their consent. Moreover, the questionnaires and interview guides used to collect data from Victims were shared with psychologists from OFAVyT to ensure that Victims were not harmed or re-victimized (annexes 7–9). Special attention was given to avoid taking Victims to places that could cause them harm, and therefore, all questions were limited to the experience of Victims with access to justice and not with violence.

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<sup>153</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N° 43/13*.

### 2.2.7. Limitations

The Researcher believes that Legal Organizations can assist in improving the overall condition of people.<sup>154</sup> This has to do with the Researcher's professional experience and with having had the chance to assist individuals in the context of a Legal Organization prior to undertaking this study. However, this bias was acknowledged from the beginning of this study. Additional care was therefore taken to avoid leading questions during interviews and to analyse the data with an objective perspective and clear of personal bias.

The method used to collect and analyse data relied to a certain extent on the decisions made by the Researcher. Sharing the research design with experts and colleagues helped to test decisions made throughout the process. In addition, the method used does not allow for a comparison between a group that obtained access to justice and a group that did not. A treatment-effect approach would have been beneficial to assess, by comparison, the real effect of access to justice in LE. This method was not possible due to the difficulties in finding a sample of Victims who recognized themselves as Victims and who had not obtained access to justice. The six-month interval between interviews and the questions related to the paths followed by Victims to obtain access to justice and to decide to submit complaints were used to overcome this limitation. Moreover, the method used does not allow for constant generalizations, though external validity techniques were used to derive generalizations when appropriate in this study.

The LE framework served as a tool to organize and systematize the study. However, it also brought limitations and biases because it obliged the study to initially accommodate methods to collect data. Moreover, the LE framework provided a structure that was adjusted with findings, as explained above. The inductive approach materialized by the incorporation of open-ended and non-leading questions served to reduce the bias brought by the LE framework. Moreover, the use of responsive interviewing techniques assisted the Researcher in working with interviewees as conversational partners. Probing served as a technique to deepen aspects that were more surprising, e.g. when interviewees brought forth unique ideas or perceptions.

This study was performed at the PPO. The main research question is therefore approached from the viewpoint of a Legal Organization that deals primarily with the criminal aspects of domestic violence which falls within the jurisdiction of the PPO. Efforts were made to reach out also to the civil aspects of domestic violence and the effects of other Legal Organizations that deal primarily with civil legal provisions. Involuntarily, omissions could have been made, however.

This chapter presented the LE framework and the method followed to design the study and to analyse data. The following chapters present a number of sub-sections with additional methodological information on the specificities of each of the three levels.

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<sup>154</sup> For concrete techniques on how to avoid personal biases, this study relied primarily on the following sources: Hesse-Biber and Leavy, *The Practice of Qualitative Research*, 39; Bennett and Checkel, *Process Tracing: From Metaphor to Analytic Tool*, 24–29.



## Chapter 3

### Legal Empowerment as Applied to Legal Provisions

#### 3.1. Introduction

This chapter examines how legal provisions can contribute to legal empowerment (LE). It helps answer the main research question of this study because it elucidates the available elements in legal provisions that are used by Legal Organizations and by individuals. Consequently, this chapter reflects on the relation between LE and the selected legal provisions that are enforceable.

LE is a concept without a defined legal meaning. It encompasses, under its legal provisions level, those developments in legal provisions that aim to improve the conditions of people who are more vulnerable to access and exercise rights. This level is considered a means to an end by the incorporation of legal provisions in the judicial system. The means is the law and the ends are the rights protected by substantive law, the channels provided by procedural law, and the Legal Organizations created under the umbrella of legal provisions. From a policy perspective, this level of analysis represents a governmental aspiration for the recognition of rights and the means to achieve them.<sup>1</sup> Hence, the legal provisions level uncovers social values that are present in a given society. They represent an approximation of the beliefs and values accepted by a society, and form a structure for Legal Organizations and Victims who are meant to follow options accepted by legal provisions.

The following sub-sections of this chapter apply the LE framework to legal provisions from the Argentine Constitution, human rights treaties, federal laws, City laws, and PPO internal regulations. Legal provisions of the four guiding rights presented above (2.1.2.1.) are analysed in this chapter. Before analysing the four guiding rights, the study provides an overview of the Argentine legal framework to contextualize the succeeding sub-sections (3.2.). The chapter then analyses the four guiding rights within the LE framework, starting by addressing the right of women to a life free of discrimination and violence, in order to examine the rights that are directly relevant to Victims (3.3.). The chapter then addresses legal provisions dealing with the right to access to justice, considering it the main factor that can allow for the LE process to commence (3.4.). The guiding right to a remedy is analysed afterwards to understand the legal options given by legal provisions to Victims to receive a legal remedy (3.5.). Lastly, the guiding right to democratic participation is addressed in order to understand the legal options that Victims have to voice themselves as members of society (3.6.). Partial observations follow each guiding right, and concluding observations for the chapter are presented in the order of the LE framework to provide comprehensive remarks on the four guiding rights (3.7.).

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<sup>1</sup> Dunn, *Public Policy Analysis*, 3.



## 3.2. Overview of the Argentine Legal Framework

Argentina is a federal state<sup>2</sup> geographically divided into jurisdictions.<sup>3</sup> The National Congress (Congress) has the power to enact substantive law, such as the civil code,<sup>4</sup> and every jurisdiction is ruled by those legal provisions. Provinces preserve the power to enact their procedural codes. Each province, and the City,<sup>5</sup> enacts its own constitution in accordance with the Argentine Constitution,<sup>6</sup> and ensures administration of justice (courts and procedural codes), municipal regime, and elementary education.<sup>7</sup>

Municipalities and the City represent another form of decentralization, making decisions directly related to the life of those who dwell within their boundaries. The City has administrative, legislative, and judicial functions.<sup>8</sup> The functions of the judicial system are limited to contraventions, neighbourhood matters, administrative proceedings, and local taxes; all remaining matters are subject to the jurisdiction of the provincial and federal courts.<sup>9</sup>

Legal provisions are presented in this study following the hierarchical structure incorporated by the Argentine Constitution (i.e. 1<sup>st</sup> Constitutional law, 2<sup>nd</sup> Federal law, 3<sup>rd</sup> City law).<sup>10</sup> This study excludes provincial legislation. The legal provisions under analysis are mostly those that developed since 1994, because this period represents a shift in paradigm in the approach to access to justice, conflict resolution, violence against women, and the role played by Victims in the process.

Constitutional law includes the Argentine Constitution and human rights treaties. The Argentine Constitution gives the value premises under which Argentine society is formed. Human rights treaties, incorporated in the Argentine Constitution in 1994,<sup>11</sup> recognize and extend rights to the people. They also increase the international

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<sup>2</sup> Congreso General Constituyente, *Constitución Argentina*. All references in English to the text of the Argentine Constitution made in this thesis were taken from the English translation to the text of the Argentine Constitution available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=282508](http://www.wipo.int/wipolex/en/text.jsp?file_id=282508).

<sup>3</sup> Argentina is divided into 23 provinces and the City. Municipalities are within each province and district (known as *comunas*) within the City. Districts are territorial divisions in the City with capacity to perform acts related to planning, execution, and control. They can be assimilated into municipalities, see *ibid.*, arts 1, 5 and 31; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 25–27.

<sup>4</sup> Congreso General Constituyente, *Constitución Argentina*, art 75(12).

<sup>5</sup> The City has federal joint participation in direct and indirect taxes. The City is the capital of Argentina and before 1994 it was subject to federal law and federal jurisdiction. After 1994, the City gained federal autonomy, see *ibid.*, art 75(2).

<sup>6</sup> Art 28 reads: “The principles, guarantees and rights recognized in the preceding sections shall not be modified by the laws that regulate their enforcement, *ibid.*”

<sup>7</sup> *Ibid.*, arts 5 and 123.

<sup>8</sup> *Ibid.*, art 129.

<sup>9</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 563.

<sup>10</sup> Art 31 gives supremacy to the Argentine Constitution over other laws, and art 75(22) extends this supremacy to some international treaties, Congreso General Constituyente, *Constitución Argentina*.

<sup>11</sup> Art 75(22) incorporates a list of human rights treaties with constitutional supremacy. In addition, it establishes the procedure for further approval of international treaties. Human rights treaties that do not achieve constitutional supremacy remain, hierarchically, above federal law, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 591–97.

responsibility of the state to, on the one hand, implement policies to ensure proper prevention on latent social problems and, on the other hand, to examine, judge, and compensate for the violation of rights.<sup>12</sup> International recommendations (and other international documents) even when not having constitutional supremacy are hereby analysed in the constitutional and international section to facilitate the analysis. Opting for this order shows also how policy decisions at an international and constitutional level may colour the subsequent legal provisions that have to comply with this legal threshold.<sup>13</sup>

The federal domain is represented by national codes, such as the Argentine Criminal Code, and tailor-made regulations, such as Law 26485 on the right of women to live free of violence (Law 26485). Tailor-made regulations are recent legislative developments that tend to address the rights of particular groups instead of the rights of the entire society. A similar trend can be perceived with regard to human rights treaties. Law 26485 also describes new tendencies on holistic approaches, giving a comprehensive remedy to a specific group. It also incorporates principles and standards set up by human rights treaties.<sup>14</sup>

Regulations recently adopted for the City are also addressed in this study. Examples of these regulations are found in the Constitution for the City of 1996 (City Constitution) and the Code of Criminal Procedure for the City of 2007 (CCPC). The domain of the City also represents an interesting reform in the judicial system, often claimed necessary in Argentina.<sup>15</sup> The Public Prosecutor's Office of the City (PPO) is granted with functional autonomy and autarky within the judicial system giving the capacity of the state organization to draft internal regulations.<sup>16</sup> Internal regulations are important because they convert those principles established in overarching legal provisions into a more concrete set of actions to be implemented by providers to secure the exercise of rights.

### 3.3. Right of Women to a Life Free of Discrimination and Violence

#### 3.3.1. Enhancement

This sub-section studies the developments in legal provisions on the right of women to a life free of discrimination and violence. This sub-section examines the extension and the scope of the incorporation of a right tailored for the vulnerable group analysed in this study.

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<sup>12</sup> General Secretariat Organization of American States, "Access to Justice for Women Victims of Violence in the Americas," paras. 15, 33; UNTS, *Convention of Belém Do Pará*, art 7; Velásquez Rodríguez v. Honduras (Inter-American Court of Human Rights 1988).

<sup>13</sup> Hill, *The Public Policy Process*, 160.

<sup>14</sup> For an analysis on how international law influenced Law 26485, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 11–288.

<sup>15</sup> Méndez, "El Acceso a la Justicia, un enfoque desde los Derechos Humanos," 16.

<sup>16</sup> The autonomy capacity allows the PPO to regulate its internal organization and functioning. The autarky capacity allows the PPO to set administrative and financial rules. Convención Constituyente, *Constitución de la Ciudad*, art 124; Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 354.

### 3.3.1.1. *Constitutional and International*

Women and men are considered active users of rights;<sup>17</sup> however, women are perceived by the international legal community to be legally discounted. Consequently, a number of human rights treaties aimed at improving the situation of women were introduced as means to ensure women's rights in Argentina.<sup>18</sup> These human rights treaties highlight the social relevance of enabling the full development of women in acknowledgement of their contribution to social capital and to the achievement of society's well-being and peace.<sup>19</sup> It is therefore in the best interest of states to introduce policies that contribute to the full participation of women, reducing discriminatory acts.<sup>20</sup>

A wave of international regulations on violence against women gained momentum in Argentina in 1994, such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>21</sup> and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará).<sup>22</sup> Recommendations hence reinforced the obligation of the states "to act with due diligence in responding to human rights violations."<sup>23</sup> CEDAW and the Convention of Belém do Pará have been especially relevant for Argentina when implementing public policies to eradicate violence against women. These international documents directly address the right of women to a life free of violence and the role of the state in procuring proper mechanisms for Victims to benefit from a judicial system that deals with the specificities of their problems.<sup>24</sup> Additionally, violence against women is understood, by these documents, as a

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<sup>17</sup> e.g. the terminology present in some articles addressing equality of rights: art 24 on the right to equal protection of the law, art 23 on the right to participate in government, art 16 on the right to freedom of association, art 2 on the right to domestic legal effects, and art 7 on the right to personal liberty (UNTS, *Pact of San José*); arts 2, 3 and 20 on the right to participate in the public policy process (OEA, *Am. Decl.*); and art 26 on the right to equal protection of the law (International Covenant on Civil and Political Rights, 999 UNTS 171 [1976]).

<sup>18</sup> Flores, "Women's Human Rights in the Framework of Argentine Domestic Law: Treatment since the Return to Democracy."

<sup>19</sup> UNTS, *CEDAW*, preamble, 1.

<sup>20</sup> Art 1 provides a definition on discrimination against women and reads: "For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"; *ibid.*

<sup>21</sup> UNTS, *CEDAW*.

<sup>22</sup> UNTS, *Convention of Belém Do Pará*; Medina Quiroga, "Género y Acceso a la Justicia (1)," 240.

<sup>23</sup> General Secretariat Organization of American States, "Access to Justice for Women Victims of Violence in the Americas," para. 27; *Yean and Bosico Children v. the Dominican Republic* (Inter-American Court of Human Rights 2005).

<sup>24</sup> UNTS, *Convention of Belém Do Pará*, arts 7(d) and 8(d); UNTS, *CEDAW*, art 25; see also General Secretariat Organization of American States, "Access to Justice for Women Victims of Violence in the Americas," para. 18 (Executive Summary) and 24.

manifestation of a discriminatory act.<sup>25</sup> CEDAW defines in article 1 discrimination against women as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The right of women to live free of violence, therefore, includes “the right of women to be free from all forms of discrimination; and the right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.”<sup>26</sup> Discrimination against women can also lead to social and organizational obstacles to access to justice and claim of rights.<sup>27</sup> Hence, the discriminatory factors in different communities can be assessed in the way in which the judicial system and providers address domestic violence cases.<sup>28</sup> The discrimination is reduced when a state introduces policies by which to facilitate access to justice and conflict resolution for those who suffer violence.<sup>29</sup>

Discriminatory practices recognized by article 7(e) of the Convention of Belém do Pará call for states to challenge and reform the letter of the law and current customs.<sup>30</sup> Article 16 of CEDAW includes the rights of women within marriage and family relations. The article equates the rights of men and of women when making decisions within the family environment, locating both parties on the same level.<sup>31</sup> Legal provisions are still considered changers of social conduct and, therefore, the Convention of Belém do Pará calls for states to incorporate the legal provisions “needed to prevent, punish and eradicate violence against women.”<sup>32</sup> The request for state action is also found in article 2 of CEDAW, strengthening the importance of the role of the state to achieve societal change.<sup>33</sup> The Brasília Regulation Regarding Access to Justice to Vulnerable People (Brasília Regulation) recognizes the way in which the vulnerability to being harmed increases when Victims submit complaints. The

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<sup>25</sup> CEDAW General Recommendations Nos. 19 and 20, UN HRTB 1 (1992); General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” paras. 49–50.

<sup>26</sup> UNTS, *Convention of Belém Do Pará*, art 6.

<sup>27</sup> XIV Ibero-American Judicial Summit, *Brasília Regulations Regarding Access to Justice for Vulnerable People*, para. 17.

<sup>28</sup> General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” paras. 8–9.

<sup>29</sup> Comas de Argemir, “Violencia de género: Normativa internacional para combatirla y propuestas legales en España,” 283.

<sup>30</sup> See also, General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 71.

<sup>31</sup> UNTS, *CEDAW*, arts 16 and 1 with a broader approach to discrimination against women.

<sup>32</sup> UNTS, *Convention of Belém Do Pará*, art 7(c); for a debate on the prevention and eradication of violence against women, see also UN Women, “The United Nations Fourth World Conference on Women.”

<sup>33</sup> UNTS, *CEDAW*, art 2.

regulation requires, therefore, the judicial system to implement special efforts to protect this vulnerable group when the process is taking place.<sup>34</sup>

Relevant provisions were drafted at a regional level placing the state as the main agent able to guarantee rights. The Inter-American Commission on Human Rights<sup>35</sup> and the Inter-American Human Rights Court provide a deep understanding on women's rights, highlighting the principles of equality and non-discrimination.<sup>36</sup> These legal provisions and the court stress the importance of the states in incorporating effective federal provisions and concrete policies to tackle gender violence and discrimination. Furthermore, the judicial system is considered by them as a key actor in achieving this goal, because a system trained in dealing with gender violence problems is important in order to improve, for example, the way the description of facts made by Victims are judged credible.<sup>37</sup> It is worth highlighting the approach by Inter-American Commission on Human Rights and the Inter-American Human Rights Court towards the role of legal provisions, not only as a set of standards and values, but also as tools to change social conduct. Moreover, they recognize the importance of the cooperation between every member state.<sup>38</sup>

The importance of gender equality for the international community can also be perceived by how gender is treated throughout the UN Millennium Goals.<sup>39</sup> The importance of gender equality can especially be perceived in the gender perspective introduced to many of the goals, such as in the educational, health, and employment spheres.<sup>40</sup> *The Road to Dignity by 2030: Ending Poverty, Transforming* recognizes that “gender parity in primary school enrolment, access to child and maternal health care and in women’s political participation has improved steadily.”<sup>41</sup> The demand for equality and non-discrimination is recognized by the post-Millennium Goals efforts as one of the key aspects communities are called to work on,<sup>42</sup> and gender equality and empowerment of women and girls became one of the post-Millennium Goals

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<sup>34</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, paras. 75–76.

<sup>35</sup> Performing together with the dependent Office of the Rapporteur on the Rights of Women.

<sup>36</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*.

<sup>37</sup> *Ibid.*, 468–69.

<sup>38</sup> For an analysis of key court decisions from the Inter-American Human Rights Court and relevant rapporteurs, see *ibid.*, 393–439.

<sup>39</sup> UN, “United Nations Millennium Development Goals.”

<sup>40</sup> For an analysis of the importance of the incorporation of the gender perspective for the development of countries, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 555–65.

<sup>41</sup> United Nations General Assembly, “Integrated and Coordinated Implementation of and Follow-up to the Outcomes of the Major United Nations Conference and Summits in the Economic, Social and Related Fields. Follow-up to the Outcome of the Millennium Summit,” para. 17.

<sup>42</sup> Para. 54 reads: “People have called for an end to all forms of gender inequality, gender-based discrimination and violence against women and against children and young boys and girls.” United Nations General Assembly, “Integrated and Coordinated Implementation of and Follow-up to the Outcomes of the Major United Nations Conference and Summits in the Economic, Social and Related Fields. Follow-up to the Outcome of the Millennium Summit.”

proposed by the Open Working Work.<sup>43</sup> This reveals that gender equality and equality of women remain important challenges worldwide.<sup>44</sup>

### 3.3.1.2. Federal

Throughout history women have been discriminated against by political acts and socially expected to perform based on stereotypes. In Argentina, at the federal level women gained the right to vote only in 1947.<sup>45</sup> Law 23592 was enacted in 1988 to address discriminatory acts,<sup>46</sup> and it has a general approach to discrimination, including monetary fines for those who commit discriminatory acts in public spaces.<sup>47</sup> In 1991, a Gender Quota Law forced different sectors to include women representation.<sup>48</sup> Three years later, Law 24417 against domestic violence was adopted, being the first of its kind at the federal level.<sup>49</sup>

The drafting of Law 24417 was motivated by article 14bis of the Argentine Constitution.<sup>50</sup> This law defines domestic violence as that which occurs among family members without differentiating genders, and establishes the procedural baseline and judicial competency.<sup>51</sup> Judges have to request from a multidisciplinary group a diagnosis of the inter-family relations, and evaluate the risks.<sup>52</sup> The Executive Order of Law 24417 instructs the creation of information and advice centres located in hospitals and the creation of judicial assistance centres and the National Council of Women.<sup>53</sup>

Law 25087 of 1999 introduces amendments to the Argentine Criminal Code and eliminates patriarchal vocabulary (e.g. the honest woman and chastity).<sup>54</sup> However, the Argentine Criminal Code never included an article addressing domestic or family violence. Certain typified crimes available in the Argentine Criminal Code are used to

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<sup>43</sup> Goal 5 reads: “Achieve gender equality and empower all women and girls”; *ibid.*

<sup>44</sup> *Ibid.*, para. 68.

<sup>45</sup> Congreso de la Nación Argentina, *Derechos políticos de la mujer*.

<sup>46</sup> Congreso de la Nación Argentina, *Actos discriminatorios*.

<sup>47</sup> *Ibid.*, art 6.

<sup>48</sup> Since 2005 the Argentine Supreme Court has had two female judges out of the total of 9 judges (Carmen María Argibay (2005) and Elena Highton de Nolasco (2004)). Moreover, the judicial system (excluding the Argentine Supreme Court and the Attorney General’s Office) has a representation of 54% women and 46% men, and in Congress almost 40% of members are women.

<sup>49</sup> The introduction of laws tackling violence against women in Argentina is considered a model to follow by other countries of the region. See General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 109.

<sup>50</sup> Art 14bis addresses, amongst other duties, the duty of the state to grant a holistic protection to the family. See Congreso General Constituyente, *Constitución Argentina*; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 362.

<sup>51</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 1.

<sup>52</sup> *Ibid.*

<sup>53</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 235/1996*.

<sup>54</sup> Congreso de la Nación Argentina, *Delitos contra la integridad sexual Código Penal*. Other criminal codes of the region introduced similar legal provisions (e.g. Bolivia, Ecuador, Peru), see General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas” footnotes 340–346.

deal with domestic violence cases (e.g. the crimes of threats,<sup>55</sup> death,<sup>56</sup> and sexual integrity and sexual abuse<sup>57</sup>).

Law 26485 was enacted in 2009 to promote and guarantee the elimination of discrimination and violence against women in every aspect of life. Argentina, with this law, responded to its international duty to incorporate domestic laws to eliminate violence against women.<sup>58</sup> Law 26485 considers violence a form of discrimination. It sees both discrimination and violence as the result of socio-cultural patterns that feed upon expressions that stimulate and perpetrate violence against women.<sup>59</sup> Law 26485 emphasizes the right of women to a life free of violence and discrimination,<sup>60</sup> and has amongst its main objectives the eradication of discrimination between men and women in every aspect of life.<sup>61</sup> The law understands domestic violence as a gender problem and calls for the implementation of policies aimed at women. Law 26485 contemplates two sub-groups of women: children and prisoners, but does not contemplate elderly women.<sup>62</sup>

Law 26485 defines violence against women along similar lines as international treaties, basing violence in a power inequality that has an impact on the life of women.<sup>63</sup> The power inequality is based on the historical socio-cultural role of women that creates stereotypes that positioned women in a lower situation if compared to men (e.g. in the decisions made in family matters).<sup>64</sup> Furthermore, the law understands that violence can be manifested in different ways, not limited to physical, physiological, and sexual violence, but also including economic, patrimonial, and symbolic violence.<sup>65</sup> A comprehensive idea offers a broad definition of violence against women<sup>66</sup> and the goal to eliminate stereotypes on unequal power relations between men and women in the private and public spheres. Furthermore, Law 26485 presents a non-exhaustive list of

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<sup>55</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, para. 1, art 149bis.

<sup>56</sup> Congreso de la Nación Argentina, *Código Penal de la Nación* arts 81, 119 and 144ter.

<sup>57</sup> For an analysis of the developments in the incorporation of sexual crimes, see Tenca, *Delitos sexuales*.

<sup>58</sup> UNTS, *CEDAW*, art 7(c).

<sup>59</sup> Socio-cultural patterns promote and sustain gender inequality, practices, customs, and social and cultural conduct expressed through regulations, speeches, symbols, images, or any other means of expression that stimulate violence against women or that tend to: 1. perpetuate the idea of inferiority or superiority of one gender over the other; 2. promote or keep assigned stereotypes to women and men; 3. underestimate or overestimate the tasks normally undertaken by one of the genders; 4. use debased images of women or images with a vexatious or discriminatory meaning; 5. refer to women as objects, see Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>60</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(a).

<sup>61</sup> *Ibid.*, art 2(a).

<sup>62</sup> The law leaves aside a sub-group with special vulnerabilities due to age, see Medina, “Ley de protección integral a las mujeres. Objetivo y derechos protegidos.” In addition, other studies suggest that particularities of elderly women need to be addressed by legal provisions due to the additional obstacles they may experience in seeking external help based on prolonged abuse and dependency, see Burton, “Domestic Abuse. Literature Review,” 11.

<sup>63</sup> Congreso de la Nación Argentina, *Ley 26485*, art 4.

<sup>64</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 4.

<sup>65</sup> Congreso de la Nación Argentina, *Ley 26485*, art 5; for a comment on the different types of violence incorporated by Law 26485, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 98–108.

<sup>66</sup> As introduced by art 4 of Congreso de la Nación Argentina, *Ley 26485*.

spaces where violence against women can take place: (i) within the family (domestic violence),<sup>67</sup> (ii) within the state organizations (organizational violence),<sup>68</sup> (iii) within the working environment (workplace violence),<sup>69</sup> (iv) within the media (media violence);<sup>70</sup> and (v) within the private and public spheres, where the right of women to freely decide on reproduction and reproductive health is dealt with.<sup>71</sup>

The Argentine Civil Code had also gone through a transition in the way in which private law recognizes women as active members of society and especially within the household. The original text of the Argentine Civil Code of 1869 distinguished between single and married women, the former being fully competent to act, while the latter being only partially competent to act. This incapacity derived from the recognition of the need for having one head of the household for the harmony of the decision-making: and that head was traditionally assigned to men.<sup>72</sup> The husband was then the legal guardian of the wife and the children. Only in 1968 did married women gain full capacity, as a consequence of international law (Pact of Bogotá, 1948).<sup>73</sup>

In the 1980s, a succession of legal provisions equated the situation of men and women in the family sphere. Legal provisions address parental and patrimonial rights, guardianship over their children, and the freedom of women to carry their family name.<sup>74</sup> The current Civil and Commercial Code for the Nation (Civil and Commercial Code) further equalizes women and men, for example, by using gender neutral vocabulary when addressing family matters. Therefore, instead of giving the right to women to carry their family name, the Civil and Commercial Code states that any spouse can opt for using the last name of the other.<sup>75</sup> Similar is the approach to the parental rights, since the Civil and Commercial Code addresses parents, without distinguishing between mother and father<sup>76</sup> and also gives special emphasis to the

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<sup>67</sup> Domestic violence considers that violence is committed by a family member (i.e., husband, partner, boyfriend, and blood relationship or indirect blood relationship) regardless of occurring inside or outside the house, and if it “damages ... dignity, well-being, physical, psychological, sexual, economic or patrimonial integrity, and freedom ...,” *ibid.*, art 6(a).

<sup>68</sup> *Ibid.*, art 6(b).

<sup>69</sup> Workplace violence encompasses acting in a discriminatory way towards women when hiring, promoting, remunerating, and systematically harassing, *ibid.*, art 6(c); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>70</sup> Media violence encompasses messages that promote discrimination against women. The National Council of Women has the task of implementing actions to prevent, sanction, and eradicate these messages. Congreso de la Nación Argentina, *Ley 26485*, art 6(f); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 6(f). For a comment on art 6 Law 26485, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 108–158.

<sup>71</sup> Congreso de la Nación Argentina, *Ley 26485*, art 6(d)(e); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>72</sup> Medina, “Situación de La Mujer En El Proyecto Del Código Civil de 1998.”

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*; for a historical approach on how women were considered in the Argentine Civil Code from 1887–1943, see Cháneton, *Historia de Vélez Sársfield*.

<sup>75</sup> Congreso de la Nación Argentina, *Código Civil y Comercial Argentino*, art 67.

<sup>76</sup> *Ibid.*, arts 640–697.



rights of the children. The Civil and Commercial Code reveals a more equalitarian approach to family relations.<sup>77</sup>

### 3.3.1.3. *City*

Reforms in legal provisions are more effective when complemented by “efforts to address asymmetric power structures.”<sup>78</sup> Legal developments in the City did not escape the above-mentioned statement. The text of the City Constitution uses a gender neutral vocabulary to stress the equality between sexes,<sup>79</sup> and similarly to Law 26485 the City Constitution understands violence as a gender issue. Article 38, consequently, stipulates that the City needs to promote the prevention of violence against women and to offer specialized services to deal with these cases.

The City Constitution addresses the right of people to a life free of discrimination. Article 11 states that “every person has identical dignity and is equal before the law.”<sup>80</sup> Furthermore, the City Constitution recognizes the right of people to be different and instructs the City to promote the removal of obstacles that limit the exercise of freedom and equality. Freedom and equality are seen, therefore, as beneficial for the development of people and their political, economic, and social participation.<sup>81</sup> The City Constitution explicitly rejects discrimination based on gender.<sup>82</sup> Quiroga Lavié states that the text of the City Constitution is more advanced than that of the Argentine Constitution because the City Constitution is progressive by removing women from comparison with other vulnerable groups and by treating them autonomously.<sup>83</sup>

The City Constitution introduces a chapter on the equality between men and women which derives from the debates that took place during the constitutional convention.<sup>84</sup> During those debates the gender issue was approached with fervour, and references were made to classic literature that referred to gender stereotypes together with special

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<sup>77</sup> e.g. art 646 addresses the right of children to be heard and to participate in educational programmes, and art 647 addresses the prohibition of physical punishment, *ibid*.

<sup>78</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 15.

<sup>79</sup> e.g. art 124 on the composition of the Attorney General Office, art 39 on the rights of children and adolescents (girls and boys), Convención Constituyente, *Constitución de la Ciudad*; in addition, the gender neutral vocabulary is largely used in legal provisions adopted by the City after it gained autonomy, see e.g. Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley Orgánica del Ministerio Público*.

<sup>80</sup> Convención Constituyente, *Constitución de la Ciudad*, art 11.

<sup>81</sup> *Ibid.*, art 11.

<sup>82</sup> *Ibid.*, art 11; for an analysis in English of the relevant legal provisions introduced by the City Constitution on the rights of women, see Flores, “Women’s Human Rights in the Framework of Argentine Domestic Law: Treatment since the Return to Democracy,” 337–40.

<sup>83</sup> The section in the City Constitution dealing with equality between men and women is treated separately from sections dealing with vulnerable groups (e.g. art 39 on the rights of children and adolescents, art 40 on the rights of the youth, art 41 on the rights of the elderly, and art 42 on the rights of people with special needs). Quiroga Lavié argues that the latter distinction is appropriate since women cannot be compared to other vulnerable groups because they represent more than half of the population of the City, see Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 115.

<sup>84</sup> Convención Constituyente, *Constitución de la Ciudad*, arts 36–38.

references to women who fought to end those stereotypes.<sup>85</sup> The debate is interesting because it shows how three-century-old events are still referred to in order to illustrate and reassure the importance of women's equal participation. This is indeed a sign that the equalitarian concept between genders is still not embedded and fully accepted in society. A similar confirmation can be perceived when the constitutional convention reaffirmed the obligation of the state to intervene in the private sphere of families facing domestic violence.

The constitutional convention recognized how the characteristics of domestic violence cases (i.e. secrecy, lack of evidence, and social and judicial obstacles) diminish the number of complaints submitted, and constrain the collection of data to act accordingly.<sup>86</sup> Statistical analysis of data was brought into the debates to graph those problems faced by women (e.g. the disadvantaged situation encountered by single women heads of households). Furthermore, the shared responsibility of both parents to make decisions on family matters was highlighted in the debates, with an emphasis on the need to leave aside stereotypes obstructing the achievement of equality within the family. The constitutional convention, consequently, highlighted the need to include principles in the text of the constitution that could be materialized in real policies aimed at reducing gender disparity.

The letter of the City Constitution was therefore influenced by the debate, and ultimately resulted in the introduction of book 1, title 2 (on special policies), chapter 9, articles 36 to 38, on the equality between men and women. These articles read:

Art 36: The city guarantees, in the public sphere, and promotes, in the private sphere, the equality of opportunities and treatment between men and women in access and enjoyment of all civil, political, economic, social, and cultural rights, through affirmative action that allows the effective access to every sphere, organism, and level ...

Art 37: Recognizes the reproductive and sexual rights of women, free of coercion and violence ... the equality of rights and responsibilities between men and women as parents is guaranteed, together with the promotion of the integral protection of the family.

Art 38: The city incorporates a gender perspective in the design and implementation of public policies. It also elaborates a plan for equality between men and women. It stimulates the modification of socio-cultural stereotypes aiming to eradicate practices based on superiority prejudice towards one gender. ... provides to the prevention of physical, physiological, and sexual violence against women and provides with specialized centres of assistance, protects

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<sup>85</sup> Special mention was made during these debates to Olimpia de Gouges who, in 1793 in France, was executed at the guillotine for her request to grant citizen rights to women and for "forgetting the virtues of her sex and pretend[ing] to participate in issues of the Republic," see *Convención Constituyente*, "Debates de la Convención Constituyente y Constitución de la Cuidad Autónoma de Buenos Aires."

<sup>86</sup> *Ibid.*

victims of sexual abuse and provides attention services; it promotes the participation in the public policy design of NGOs who advocate for women's issues.<sup>87</sup>

The inclusion of these articles turns the law into an institution for social organization and complements the value premises under which society is formed.<sup>88</sup> The current text provides a strategic plan to tackle the problem which needs to be considered by providers when applying those rules.<sup>89</sup> It also extends the legal aspect and recognizes the need to provide assistance as an important element of conflict resolution. The preventive aspect is considered by these articles almost as relevant as the quality of the assistance.<sup>90</sup> The texts stress the equality between men and women in every sphere of life participation, the cooperation of the state with NGOs, and calls for an active role of policymakers and state organizations in order to achieve equality amongst genders.<sup>91</sup> Article 39 states a special priority to children, granting them an integral protection when their rights are threatened or violated. This article protects the right of children to live free of violence and manifests the importance given to children in preserving healthy family dynamics.

The family is perceived by legal provisions as a valuable institution. The CCPC, together with the Argentine Constitution, protects the family and denies the possibility of family members to submit complaints against each other, unless the accuser is directly harmed.<sup>92</sup> The integral protection of the family is secured and legal provisions stress the value of solidarity and respect among family members.<sup>93</sup> The CCPC, in addition, excludes mediation as an alternative form for conflict resolution for family violence.<sup>94</sup>

The Contravention Code for the City (City Contravention Code), sanctioned in 2004, includes two articles to penalize actions against the physical integrity of people. Article 52 penalizes the harassment, intimidation, or physical abuse of others with a fine, with five days of jail sentence or with one to five days of performing public utility work.<sup>95</sup> As seen in chapter 4 of this study, these articles are commonly referred to in the activities of the PPO.

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<sup>87</sup> Convención Constituyente, *Constitución de la Ciudad*.

<sup>88</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 120–121.

<sup>89</sup> Ibid., 126–128; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 304–6.

<sup>90</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 122–123.

<sup>91</sup> Ibid., 115.

<sup>92</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 80.

<sup>93</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 407–8.

<sup>94</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 204.

<sup>95</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 52.

### 3.3.1.3.1. Public Prosecutor's Office

The PPO adopted internal regulations to assess, assist, and intervene in domestic violence complaints.<sup>96</sup> The regulations were drafted in response to the high number of complaints submitted on domestic violence topics,<sup>97</sup> and with the standards recognized by international legal provisions.<sup>98</sup> Internal regulation 16/10 on the framework of action for cases with domestic violence indicators incorporates principles of the Brasilia Regulation and of the Santiago Guidelines on Victim and Witness Protection.<sup>99</sup> Internal regulation 16/10 was further developed in 2012 by internal regulation 531/12. Both regulations recognize ways in which gender violence is exteriorized.<sup>100</sup> In addition, the regulations stress the importance of tackling gender violence issues and they recognize gender violence as a socially constructed hierarchical relationship between men and women.

The state is considered, within the internal regulations, as a relevant agent due to its capacity to adapt the legal provisions to tackle this problem and in view of its international and national responsibilities to incorporate state organizations to ensure gender equality. The City, consequently, is perceived as the designer and implementer of policies aimed at guaranteeing an effective intervention with the creation of programmes and actions directed to improve the problem of gender violence.<sup>101</sup>

Internal regulation 16/10 provides a framework for the problem of domestic violence, since this problem is not recognized as a crime *per se*. The internal regulation defines domestic violence as “any violence committed by a person with whom the victim has an intimate relation or by other family members, regardless the place or form in which violence is exteriorized.”<sup>102</sup> The internal regulation continues by including illicit conduct that falls into this definition and under the jurisdiction of the PPO.<sup>103</sup> This entails the crimes of threats,<sup>104</sup> violation of domicile,<sup>105</sup> simple and aggravated damages,<sup>106</sup> breach of family assistance duties,<sup>107</sup> and the contravention of

<sup>96</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*.

<sup>97</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*, 4, 6.

<sup>98</sup> The international documents that are referred to the most in the internal regulations are: UNTS, *CEDAW*; UNTS, *Convention of Belém Do Pará*; Asociación Iberoamericana de Ministerios Públicos, “Guías de Santiago sobre Protección de Víctimas y Testigos”; and XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*.

<sup>99</sup> Asociación Iberoamericana de Ministerios Públicos, “Guías de Santiago sobre Protección de Víctimas y Testigos.”

<sup>100</sup> i.e. psychological, social, economic, and physical violence.

<sup>101</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*, 3.

<sup>102</sup> Definition borrowed from a report written for UNICEF by Khan Mehr in 2000, Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*.

<sup>103</sup> The City, after it gained autonomy and in order to adjust to its new capacity, has been gaining jurisdiction over different types of illicit conduct, see Congreso de la Nación Argentina, *Convenio de Transferencia Progresiva de Competencias Penales de la Justicia Nacional al Poder Judicial de la Ciudad Autónoma de Buenos Aires*, 2008.

<sup>104</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 149bis.

<sup>105</sup> *Ibid.*, art 150.

<sup>106</sup> *Ibid.*, arts 183–184.

<sup>107</sup> Congreso de la Nación Argentina, *Ley 13944*.

harassment.<sup>108</sup> More attention is therefore given to the type of assistance and answers given to Victims by the inclusion of the Victims and Witness Assistance Office (OFAVyT).

The internal regulation raises the problem of domestic violence as a gender issue, based on the large percentage of women victims of violence if compared to men. Furthermore, it recognizes the importance of an NGO that triggered the awareness on the problem by introducing statistics of Victims.<sup>109</sup> The regulation attributes the lack of effective involvement of the state together with the inaction of Victims to file away complaints, and the role of the PPO to protect human rights and achieve social satisfaction. Internal regulation 16/10 then incorporates the multidisciplinary assistance approach by OFAVyT and its immediate intervention for domestic violence cases.

### 3.3.1.4. *Partial Observations*

Human rights treaties address the right of women to a life free of violence as a policy problem. Violence against women is considered by legal provisions as a manifestation of a discriminatory act.<sup>110</sup> The concept of discrimination based on gender is understood as one that builds on a historical unequal power relation between men and women. This unequal relation is manifested within the family structure and beyond (e.g. employment). Human rights treaties, Law 26485, and internal regulations recognize the different forms in which gender violence can be manifested (i.e. physical, psychological, and symbolic) and within different spheres of life performance (i.e. domestic, organizational, media, and employment). Legal discriminatory actions against women can be performed through the letter of the law and acts of providers.<sup>111</sup>

Therefore, if analysed from a historical perspective, federal legal provisions in Argentina attempt to eliminate discriminatory vocabulary and to equate both genders by the incorporation of positive measures (e.g. Argentine Constitution, City Constitution, Argentine Criminal Code, Civil and Commercial Code, Law 24417, and Law 26485). Legal provisions seem to indicate that discrimination can be reduced when a state facilitates real access to justice and conflict resolution for Victims.<sup>112</sup> In consequence, Legal Organizations were created in the City to deal with violence issues (e.g. OFAVyT and the Domestic Violence Office, OVD). Coordination amongst

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<sup>108</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 52.

<sup>109</sup> Specifically referring to the number of femicides revealed by “La casa del encuentro” in 2009, see “La casa del encuentro - NGO.”

<sup>110</sup> CEDAW General Recommendations Nos. 19 and 20, UN HRTB 1 (1992); General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” paras. 49–50.

<sup>111</sup> e.g. by the passive or active reaction of the judicial system towards domestic violence, see General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” paras. 8–10.

<sup>112</sup> Comas de Argemir, “Violencia de género: Normativa internacional para combatirla y propuestas legales en España,” 283.

different organizations at different levels (e.g. international, federal, and City level) is considered by legal provisions as necessary for the elimination of gender violence.

### 3.3.2. Awareness

This sub-section on the awareness of the right of women to a life free of discrimination and violence analyses how legal provisions incorporate mechanisms to inform women of these rights. On the one hand, this sub-section explores how the legal provisions include strategies to make the letter of the law known by women; and, on the other hand, it explores how legal provisions contemplate the awareness of service providers on the rights of women.

#### 3.3.2.1. *Constitutional and International*

Human rights treaties protect the right to education and highlight its importance. Education has to be provided to everyone and oriented to the full development of people, with equal chances to access.<sup>113</sup> Likewise, education is considered, for the international community, as the key element to ensure awareness of rights. UNESCO stresses the importance of incorporating within educational plans an integral approach to human rights and to all forms of discrimination. Education is considered a service that needs to be provided for every human being throughout their lives. One of the recommendations drafted by UNESCO therefore states that,

first school should be designed and organized as a social environment having its own character and value, in which various situations ... enable children to become aware of their rights, to assert themselves freely while accepting their responsibilities, and to improve and extend through direct experience their sense of belonging to larger and larger communities—the family, the school, then the local, national and world communities.<sup>114</sup>

Yet, pre-school years are considered especially relevant, because this is the time when people develop their fundamental attitudes.<sup>115</sup> The education that member states need to promote, in order to prevent discriminatory behaviours, has to include the study of different cultures and the value enhanced in them to “encourage mutual appreciation of the differences between [cultures].”<sup>116</sup> As perceived by UNESCO, it is the awareness of the diversity that creates acceptance and non-discriminatory acts. Education needs to prepare students “to exercise their rights and freedoms while recognizing and respecting the rights of others” together with the performance of their social duties.<sup>117</sup> Likewise, CEDAW notes the importance of revising school textbooks and programmes to eliminate discriminatory stereotypes and the

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<sup>113</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 463–64.

<sup>114</sup> UNESCO, *Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms*.

<sup>115</sup> *Ibid.*, para. 24.

<sup>116</sup> *Ibid.*, para. 17.

<sup>117</sup> *Ibid.*, para. 12.

opportunity to have access to them.<sup>118</sup> Special emphasis is given to the opportunity of women living in rural areas to have access to those channels of information<sup>119</sup> and to provide the access beginning at an early age.<sup>120</sup>

CEDAW recognizes the right of women to have access to information as a way to enable the exercise of rights. Access to information and awareness of rights is considered a tool to exercise rights and to achieve equality between men and women. Therefore, granting the same level of opportunity for both genders to access to those sources of communication is suggested.<sup>121</sup> For example, article 16(e)(h) addresses the importance of the access to information and education of women as a prerequisite to enable free and responsible family planning.

The Convention of Belém do Pará includes the commitment by states to create programmes to “promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected,”<sup>122</sup> and to “promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women.”<sup>123</sup> Furthermore, the convention requires states to provide Victims with effective programmes that can allow them to make full use of their rights.<sup>124</sup> The Convention of Belém do Pará also requests the states communicate to the Inter-American Commission of Women on the measures to prevent, eradicate, and assist Victims.<sup>125</sup> Also, states have to provide information and training to service providers to allow for the effective implementation of policies designed to tackle gender violence.<sup>126</sup>

The 2006 Argentine report to CEDAW recognizes that the major occupation of women is in education, social services, communicatory work, and household work.<sup>127</sup> The high influence of women in the educational sector can be perceived as a sign of change if women are able to implement in their working spheres activities to eliminate stereotypes and to influence policy design.

### 3.3.2.2. *Federal*

Primary and secondary schools also play a key role in reducing discriminatory behaviours and stereotypes at the federal level. Medina et al. state that the chance to

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<sup>118</sup> UNTS, *CEDAW*, art 10(c).

<sup>119</sup> *Ibid.*, art 14.

<sup>120</sup> *Ibid.*, art 10(e).

<sup>121</sup> *Ibid.*, art 16(e).

<sup>122</sup> UNTS, *Convention of Belém Do Pará*, art 8(a).

<sup>123</sup> *Ibid.*, art 10(c).

<sup>124</sup> *Ibid.*, art 8(f).

<sup>125</sup> *Ibid.*, arts 8(e) and 10.

<sup>126</sup> *Ibid.*, art 8(c).

<sup>127</sup> CEDAW, 4to y 5to Informe Argentina, *CEDAW/C/SR.584*.

obtain access to education needs to merge with an educational programme designed to reduce stereotypes and discriminatory acts.<sup>128</sup>

Law 23592 against discriminatory acts obliges public spaces (e.g. bars, discos, theatres) to include a sign in entrance doors with article 16 of the Argentine Constitution together with an inscription on where to go for assistance if people are subject to discriminatory acts.<sup>129</sup> This law enacted in 1988 intends to create awareness within the population on the right to a life free of discrimination.

The Argentine Civil Code and the subsequent Civil and Commercial Code assume that the law is known by everyone.<sup>130</sup> This assumption is meant to protect the public order, though it has been recognized by scholars as not reflecting reality. Argentine legal scholars agree that the letter of the law is misleading, and especially for the sector of the population that is unable to afford legal representation.<sup>131</sup> Therefore, accessibility to lawyers is considered a key element for the awareness of rights.

The National Council of Women, created by Law 26485, has the task of creating social awareness by implementing preventive measures. Scholars agree that it is through education and promotion of rights that long-term changes can occur when dealing with stereotypes that are embedded in society, stereotypes such as discrimination and gender violence.<sup>132</sup> Law 26485 further instructs the Argentine Supreme Court to keep statistics on the socio-demographic characteristics of Victims.<sup>133</sup> Statistics allow for a better understanding of the dimension of the problem and therefore can help in policy design. The Executive Order of Law 26485, however, does not regulate this article, thus creating a disarticulation and lack of coordination between the different state organizations that receive domestic and gender violence complaints (i.e. state organizations collecting data). For example, OVD keeps statistics and publishes results on its website,<sup>134</sup> and the PPO does similarly. No comprehensive data set is available in the country to capture the problem on a national scale, yet. A

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<sup>128</sup> Court decisions in Latin America ruled in favour of the elimination of discriminatory stereotypes (e.g. the Argentine Supreme Court ruled that mixed-gender educational organizations assist in the elimination of gender stereotypes and need then to be promoted by the state), see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 51–62.

<sup>129</sup> Signs should read: “The Argentine Nation admits neither blood nor birth prerogatives: there are neither personal privileges nor titles of nobility. All its inhabitants are equal before the law, and admissible to employment without any other requirement than their ability. Equality is the basis of taxation and public burdens. If you are subject to any discriminatory act, you can approach the police authority and/or a civil court on duty, who is obliged to take your complaint,” Congreso de la Nación Argentina, *Actos discriminatorios*, arts 4–5.

<sup>130</sup> Both arts read: “Ignorance of the laws cannot be raised as an excuse, unless such a defence is expressly authorized by the legislation involved”, see Congreso de la Nación Argentina, *Código Civil Argentino*, art 20; Congreso de la Nación Argentina, *Código Civil y Comercial Argentino*, art 8; translation of text taken from, Trans. Románach, Jr., *Civil Code of Argentina*, 20.

<sup>131</sup> Birgin and Kohen, “Introducción. El acceso a la justicia como derecho,” 4.

<sup>132</sup> Medina, “Ley de protección integral a las mujeres. Objetivo y derechos protegidos.”

<sup>133</sup> e.g. age, marital status, profession, occupation of Victims and of the accused.

<sup>134</sup> Congreso de la Nación Argentina, *Ley 26485*, art 37; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 281–86.



coordinated system to keep data is needed to fully comply with the purpose of this article.

The Women's Office was created in 2009 to incorporate the gender perspective in the organizational design and activities performed by the state organizations to achieve gender equity.<sup>135</sup> The Women's Office stresses the importance of the organizational cooperation, and it designed a plan to incorporate gender perspective within the judicial system<sup>136</sup> (even announcing a plan for the legislature). Furthermore, a guideline for workshops on how to incorporate a gender perspective within the judicial system is available online.<sup>137</sup> The guideline is therefore accessible for the entire population and for the use of other organizations that want to implement such workshops. These workshops have been held throughout the country.<sup>138</sup>

Some initiatives were implemented to increase the awareness of women of their right to a life free of violence and discrimination. However, a 2008 study that followed from a survey conducted in Argentina on women from the lower classes shows that only 12 per cent of the sample knew of the existence of Legal Organizations that provided free assistance.<sup>139</sup> Furthermore, less than one-third of that population was able to name one of those Legal Organizations. That 2008 study also shows that only 40 per cent of the interviewees were aware of the existence of legal provisions that protect the rights of Victims.

Lastly, a vast number of policies dealing with gender discrimination and violence were pushed by two female justices of the Argentine Supreme Court.<sup>140</sup> This fact might influence the social awareness of the right of women to a life free of discrimination and violence. Furthermore, a recent study shows that more than half of law students at the University of Buenos Aires and half of the members of the bar association are women. There is still, however, under-representation of women in the higher courts, it

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<sup>135</sup> The Women's Office is located in the City and in 11 provinces (i.e. Chubut, Córdoba, Entre Ríos, Formosa, Jujuy, Mendoza, Misiones, Río Negro, Salta, Santiago del Estero, Tucumán), see Oficina de la Mujer, "Oficina de la Mujer (OM)."

<sup>136</sup> Oficina de la Mujer, "Plan para incorporar la perspectiva de género en la Justicia argentina."

<sup>137</sup> Oficina de la Mujer, "Plan de trabajo en talleres sobre género y trata de personas con fines de explotación sexual."

<sup>138</sup> In 2011, 235 seminars took place across Argentina. During that year, every province, with the exception of Jujuy, La Rioja, and Salta, provided from 3 to 25 seminars. In 2012, 93 seminars were provided in half of the country, and each province provided from 1 to 25 seminars. In 2013, 35 seminars took place in the country, and in 7 provinces, while in 2014, 47 seminars took place in 9 provinces. Therefore, one can perceive an increase in seminars in 2011 and a speedy decrease in the number of seminars and the number of provinces providing seminars thereafter. Only the City and the provinces of Córdoba, La Pampa, and Tucumán consistently provided seminars from 2011 to 2014. For a map and a list of seminars undertaken in each province, see Oficina de la Mujer, "Talleres - Replicadoras/es y referentes en todo el país."

<sup>139</sup> Referring to the 2008 work of Birgin and Gherardi titled "Retos y oportunidades para mejorar el ejercicio de los derechos de las mujeres," see Gastrón, Amante, and Rodríguez, "Gender Arguments and Gender Perspective in Legal Judgments in Argentina," 305.

<sup>140</sup> The justices are Carmen María (Carmen María, "Carmen María Argibay, CV") who passed away in 2014; and Elena Inés Highton (Elena Inés, "Elena Inés Highton, CV").

being more usual to find women judges at family and labour courts, though this dynamic might change with time.<sup>141</sup>

### 3.3.2.3. *City*

The value of education granted to all is also present in the City Constitution. Article 24 of this legal document instructs the City with the responsibility of financing and ensuring public, secular, and free education.<sup>142</sup> The education provided by the City has to contemplate the gender perspective, and incorporate programmes on human rights and sexual education.<sup>143</sup> The City Constitution places emphasis on the rights of girls and boys to be informed, consulted, and heard.<sup>144</sup> Furthermore, the text of the Constitution highlights the need to grant those with special needs an environment free of cultural, linguistic, and communicational barriers, amongst others.<sup>145</sup> These constitutional statements aim at fully integrating the disadvantaged, while stressing the need for adequate services to increase the capacity of people to freely perform.<sup>146</sup> These provisions are important under the LE framework because they return the trust to those with special needs by considering that people can perform freely when provided with adequate tools. Furthermore, these provisions help achieve equality of opportunities and are in line with the Argentine Constitution.<sup>147</sup>

#### 3.3.2.3.1. Public Prosecutor's Office

Internal regulations of the PPO address the importance of providing training to service providers. The awareness aspect falls within the PPO, because it improves the cognitive capacity of providers in understanding the rights of those they assist. The Political Criminology and Strategic Planning General Secretariat is in charge of this task, and therefore, organizes seminars on gender topics. These seminars are mandatory for members of the PPO and optional for other members of the City Attorney and the judicial system.<sup>148</sup>

### 3.3.2.4. *Partial Observations*

Elimination of discriminatory stereotypes is considered a means to eliminate gender violence. Legal provisions stress the importance of educating against non-discriminatory behaviours from an early stage of life. The state is perceived, by international and federal legal provisions, as the agent in charge of providing opportunities to women to access information and consequently to become aware of their right to a life free of discrimination and violence. There is indeed a diversity of

<sup>141</sup> Kohen, "What's in a Label? Argentine Judges' Reluctance to Call Themselves Feminists," 428.

<sup>142</sup> The City should provide education from 45 days of life until "upper levels of education" (not limited to secondary school), see Convención Constituyente, *Constitución de la Ciudad*, art 24.

<sup>143</sup> *Ibid.*, art 24.

<sup>144</sup> *Ibid.*, art 39.

<sup>145</sup> *Ibid.*, art 42.

<sup>146</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 126–128.

<sup>147</sup> Congreso General Constituyente, *Constitución Argentina*, art 75(23); Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 126–128.

<sup>148</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*, 19, 25.

approaches at the federal level. On the one hand, making the letter of the law visible is considered a technique to make people aware of their right to non-discrimination (e.g. Law 23592). On the other hand, the Argentine Civil Code and the subsequent Civil and Commercial Code assume that the law is known by everyone and transform lawyers into the only path possible to access the awareness of rights. Law 26485 promotes social campaigns to eliminate stereotypes, and the Women's Office offers training for service providers to promote the integration of the gender perspective within the judicial system. Law 26485 and the City Constitution introduce legal provisions to eliminate obstacles to the understanding of legal provisions (e.g. as communicational and cultural barriers) and to eliminate discriminatory vocabulary that may be present in judicial resolutions.

### 3.3.3. Enablement

This sub-section looks at the mechanisms available for women to exercise their right to a life free of discrimination and violence. Legal provisions addressing this vulnerable population are examined, together with those legal provisions promoting programmes that are accessible and adjustable to Victims.

#### 3.3.3.1. *Constitutional and International*

The right to a life free from discrimination is one of the pillars of the Argentine Constitution. Article 43 states that people who have been subject to discrimination can “submit a prompt and summary proceeding,”<sup>149</sup> known as the writ of *amparo* or constitutional guarantees. The writ of *amparo* provides a tool by which to exercise the right to a life free of discrimination when no other suitable legal remedy is available,<sup>150</sup> and it can be requested by individuals, the ombudsman, NGOs, and the National Attorney General's Office (Attorney General's Office).<sup>151</sup> Furthermore, the Argentine Constitution recognizes the equality of all people before the law.<sup>152</sup> Congress has the capacity to “legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women, the aged, and disabled inhabitants.”<sup>153</sup>

Positive measures can be promoted and enacted by Congress to guarantee equal opportunity and treatment through, for example, affirmative action.<sup>154</sup> Women are perceived, by this supreme law, as another minority group deserving positive measures so as to gain equality. Families are also specifically protected by the Argentine Constitution. Article 14bis, on social rights, mentions the right of families to access to

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<sup>149</sup> Congreso General Constituyente, *Constitución Argentina*, art 43.

<sup>150</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 25, 387–406.

<sup>151</sup> *Ibid.*, 398. For further information on the writ of *amparo* in Argentina, see Provost, “Emergency Judicial Relief for Human Rights Violations in Canada and Argentina,” 708–12; Rivera-Perez, “What the Constitution Got to Do with It,” 182–88.

<sup>152</sup> Congreso General Constituyente, *Constitución Argentina*, art 16.

<sup>153</sup> *Ibid.*, art 75(23).

<sup>154</sup> *Ibid.*, art 37.

adequate housing, to have family property protected, and to receive an additional sum in their salaries.<sup>155</sup> Some scholars consider that grouping members of society (e.g. women, elderly, and immigrants) to provide them with special rights affects the general constitutional principle of equality before the law.<sup>156</sup> Consequently, distinguishing groups so as to grant them with special rights can be considered unconstitutional, though it can be justified when it is meant to protect the public interest and when implemented reasonably.<sup>157</sup> The ombudsman, introduced to the Argentine Constitution in 1994, is another organizational tool for Victims to claim for rights.<sup>158</sup> Human rights treaties, such as CEDAW and the Convention of Belém do Pará, recommend the incorporation of specialized units to deal with gender violence. Proximity between the judicial system and women is also considered an important element to allow for the exercise of rights.<sup>159</sup>

Finally, it should be noted that the constitutional and international levels as developed below in 3.4.3.1. also apply to the enablement of the right of women to a life free of discrimination and violence.

### 3.3.3.2. *Federal*

The National Council of Women, as already mentioned, has to design public policies towards the effective implementation of Law 26485 and to coordinate between different Ministries and Secretariats.<sup>160</sup> The law calls for all state organizations and NGOs to achieve a comprehensive protection of women by preventing, punishing, and eradicating violence against women to enable the exercise of fundamental liberties in every sphere of life.<sup>161</sup> The discriminatory aspect between genders is therefore extended to the enablement of equal rights, opportunities, and assistance.<sup>162</sup>

Securing the right to access to justice can be more difficult for individuals without economic resources; yet, the right to a life free of discrimination and violence affects women regardless of their social class.<sup>163</sup> The National Council of Women designed a guide with a list of resources and services available to women victims of violence at the federal and City level.<sup>164</sup> The National Council of Women, as stated in, amongst other communications, the report presented by the Inter-American Commission on Human Rights, implements a national programme to achieve “Training, Technical

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<sup>155</sup> Ibid., art 14bis; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 129–30.

<sup>156</sup> Congreso General Constituyente, *Constitución Argentina*, art 16.

<sup>157</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 140, 144–45, 257.

<sup>158</sup> The ombudsman is part of the National Congress and is granted functional autonomy.

<sup>159</sup> XIV Ibero-American Judicial Summit, *Brasília Regulations Regarding Access to Justice for Vulnerable People*, para. 42.

<sup>160</sup> Congreso de la Nación Argentina, *Ley 26485*, art 8.

<sup>161</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 3(a); Congreso de la Nación Argentina, *Ley 26485*, art 7.

<sup>162</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(j).

<sup>163</sup> Medina, “La violencia doméstica no es patrimonio exclusivo de las mujeres pobres.”

<sup>164</sup> Consejo Nacional de las Mujeres, “Repertorio de recursos y servicios para la atención de la violencia.”

Assistance and Awareness of Violence against Women.”<sup>165</sup> This national programme is mentioned in academic reports, yet no references to the programme seem to be available on the website of the National Council of Women or on the Internet.<sup>166</sup> The programme, as stated in the reports, is meant to create state organizations to prevent and treat family violence with a multidisciplinary team that can properly assist and raise awareness amongst Victims and in society.

NGOs are necessary to enable women to exercise their right to a life free of discrimination and violence. As stated by Medina, NGOs have shown to be important actors at the time of presenting, on behalf of women, complaints alleging discriminatory acts. The argument is based on the risk of harm (e.g. harm from the abuser and harm in terms of shame in exposing this conduct) that Victims encounter before and after submitting a complaint based on discrimination and violence.<sup>167</sup>

Legal Organizations have been created to assist Victims, in harmony with CEDAW, the Convention of Belém do Pará, Law 24417, and Law 26485. OVD and OFAVyT are examples of these Legal Organizations, as already mentioned. These Legal Organizations, and particularly OVD, are tailor-made to enable women to exercise rights. Techniques such as multidisciplinary assistance, avoidance of re-victimization, immediate assistance, and expedited communication with civil courts, pro bono organizations, and assistance programmes (e.g. psychological assistance) are used by these Legal Organizations. The following assistance programmes, amongst others, are available at the federal level: (i) Integral Assistance to Victims of Domestic Violence from the Ministry of Justice and Human Rights of Argentina (Ministry of Justice),<sup>168</sup> (ii) Centre for Victim’s Assistance;<sup>169</sup> and (iii) Violent Men, a programme to address the violent behaviour of abusers.<sup>170</sup> It is worth mentioning that even when the list of resources to assist women is accessible through the Internet, most available resources are organizations located in the City. Each implemented programme requires a vast allocation of resources to properly operate. Therefore, and as mentioned below in 3.4.3.2., economic resources become a constraint on the maintenance and adjustment in the operation of these programmes, and consequently, communication and non-

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<sup>165</sup> CEPAL, “Informe Argentino de la trigésima novena reunión de la Mesa Directiva de la Conferencia Regional sobre la mujer de América Latina y el Caribe,” 4; General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 274.

<sup>166</sup> Consejo Nacional de Coordinación de Políticas Sociales, “Consejo Nacional de las Mujeres.”

<sup>167</sup> For a comment on the court decision “Freddo,” see Medina, “El valor de las decisiones judiciales para evitar la violencia contra la mujer. Jurisprudencia de la Corte Interamericana de Derechos Humanos y Argentina sobre Derechos Humanos de las Mujeres.”

<sup>168</sup> The Integral Assistance to Victims of Domestic Violence from the Ministry of Justice operates through a daily toll-free telephone number. Victims can call from any part of the country to receive legal, social, and psychological assistance. This number can be called, also, in emergency situations to receive immediate assistance from the police, see Ministerio de Justicia y Derechos Humanos, “Atención integral a las víctimas de violencia doméstica del Ministerio de Justicia y Derechos Humanos de la Nación.”

<sup>169</sup> The Centre for Victim’s Assistance, which depends on the police, assists Victims during weekdays from 8:00 to 20:00 hrs, see Comisaría María Isabel Sande, “Centro de Atención a la Víctima.”

<sup>170</sup> For a list of the resources available, see Ministerio de Justicia y Derechos Humanos Presidencia de la Nación, “Guía de Derivaciones - Violencia Familiar.”

duplication of tasks is recommended. “The more the merrier,” does not apply to the provision of services, because it may inadequately consume public resources.

The Women’s Office created an office in charge of the analysis and monitoring of the language used in judicial decisions in order to enable a judicial system free of gender stereotypes. The office looks at the use of vocabulary that contributes to gender stereotypes and has the capacity to draft recommendations on how to use vocabulary in a non-discriminatory way.<sup>171</sup>

Lastly, it is worth noting that records on domestic violence cases were traditionally collected by NGOs that counted cases that reached media coverage.<sup>172</sup> Information on the number of domestic violence cases in Argentina was therefore scarce prior to the data that OVD started to collect in 2008. Starting that year, data collected by OVD indicates that the number of domestic violence complaints has grown.<sup>173</sup> There are as yet no studies that assess whether the increase in cases corresponds to an increase in domestic violence or whether it responds to the operation of Legal Organizations that enable women to exercise their right to a life free of violence and discrimination. In any event, the operation of those offices could be considered an explanation or reason.

### 3.3.3.3. City

The City Constitution recognizes the duty of the state to prevent conflict and to provide assistance to people facing conflicts.<sup>174</sup> The PPO adopted internal regulation 01/10<sup>175</sup> that establishes the obligation of the Legal Organization to engage in communications with the National Institute against Discrimination, Xenophobia and Racism (INADI) and with the ombudsman for the City. The PPO has to communicate with INADI and the ombudsman when a complaint is submitted in relation to the participation of an organization or the release of an advertisement that transmits theories of superiority<sup>176</sup> or encourages discriminatory acts.<sup>177</sup> If any of these

<sup>171</sup> Oficina de la Mujer, “Análisis del lenguaje en las resoluciones judiciales.”

<sup>172</sup> e.g. the statistics collected by “La casa del encuentro.”

<sup>173</sup> e.g. in 2010 the number of complaints grew 40% if compared to 2009. For an article on how the number of complaints has grown in the City, see Medina, “Crecimiento de las denuncias de violencia doméstica en la Capital Federal.”

<sup>174</sup> For a comment on arts 36–38 of the City Constitution, see Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 122–123.

<sup>175</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 1/10*.

<sup>176</sup> Acts of superiority based on race, religion, nationality, or political ideas, see Congreso de la Nación Argentina, *Actos discriminatorios*, art 3.

<sup>177</sup> Discriminatory acts based on race, gender, ethnicity, sexual orientation, age, religion, ideology, opinion, nationality, physical characteristics, psychophysical conditions, social, economic or any other form of exclusion or impairment receive a penalty of 2 to 10 days of community activities or a monetary fine, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 65.

illicit behaviours occur, parties need to be informed about their possibility to be assisted by the INADI and by the ombudsman.<sup>178</sup>

State organizations have also been created at the City level to assist women victims of gender violence. The Comprehensive Centres for Women were created in the City to assist and provide guidance to women victims of domestic and sexual violence. The latter are decentralized in the City and offer legal advice and psychological (individual and in groups) and social assistance. Therefore, the Comprehensive Centres for Women are composed of a multidisciplinary group that enables Victims to become aware of their right to a life free of violence and provides means to exercise that right.<sup>179</sup> There are other resources available at the City level in addition to Comprehensive Centres for Women. Those resources result from, amongst others: government programmes that are oriented to specific types of women or that apply alternative therapeutic techniques,<sup>180</sup> state-funded shelters,<sup>181</sup> public hospitals,<sup>182</sup> pro bono Legal Organizations,<sup>183</sup> and NGOs.<sup>184</sup>

### 3.3.3.3.1. Public Prosecutor's Office

The PPO created OFAVyT as a division to assist Victims along the process in a holistic way. OFAVyT has a procedure manual specifically designed to guide service providers when working with cases that have domestic violence indicators.<sup>185</sup> The procedure manual specifies, for example, the type of reports that OFAVyT needs to create,<sup>186</sup> the type of meetings,<sup>187</sup> and the external referrals OFAVyT may recommend.<sup>188</sup> Furthermore, the procedure manual instructs providers to upload the information on the information technology system, allowing immediate access to prosecutors.<sup>189</sup> Units of Orientation and Complaints (UODs) also have a procedure

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<sup>178</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 1/10*; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 1048.

<sup>179</sup> Buenos Aires Ciudad, “Centros Integrales de la Mujer.”

<sup>180</sup> e.g. the programme “Lazos,” offering holistic assistance to women victims of violence committed by their sons or daughters older than 14 years, and the programme “Espacio de Mujeres,” offering alternative tools to overcome the harm inflicted by violence, see Consejo Nacional de las Mujeres, “Repertorio de recursos y servicios para la atención de la violencia,” 14–15.

<sup>181</sup> e.g. shelter “Mariquita Sánchez” and “Juana Manso,” see *ibid.*, 15–16.

<sup>182</sup> For a list of the 16 public hospitals operating in the City, see *ibid.*, 18–21.

<sup>183</sup> For a list of the 2 NGOs offering legal assistance, see *ibid.*, 26.

<sup>184</sup> For a list of 17 NGOs operating in the City, see *ibid.*, 21–26.

<sup>185</sup> Rochelle, “OFAVyT-PR-01: Procedimiento de intervención en casos con indicadores de violencia doméstica.”

<sup>186</sup> Assessing the risk and the feasibility of using alternative dispute resolution mechanisms, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12* Annex II; OFAVyT, “OFAVyT-MD-19: Informe de Evaluación de Riesgo.”

<sup>187</sup> OFAVyT, “OFAVyT-MD-01: Entrevista de Asistencia.”

<sup>188</sup> OFAVyT, “OFAVyT-MD-22: Derivaciones Externas: Legales”; OFAVyT, “OFAVyT-MD-23: Derivaciones Externas: Asistenciales”; OFAVyT, “OFAVyT-MD-24: Derivaciones Externas: Psicológicas.”

<sup>189</sup> Rochelle, “OFAVyT-PR-01: Procedimiento de intervención en casos con indicadores de violencia doméstica.”

manual to direct the service by providers who receive potential domestic violence cases. The procedure manual of UODs includes the questions that need to be asked in order to collect the necessary information to open cases<sup>190</sup> and, therefore, take advantage of this first contact by Victims to collect needed information for prosecutors to have basic information to start the preliminary investigation stage. Each contact that the PPO has with Victims needs to be maximized in terms of collection of information to avoid asking Victims to approach the PPO again (hence, avoid re-victimization).

The characteristics of conflicts in domestic violence cases demand particular ways of investigating the illicit conduct and of assisting and taking measures to protect Victims. The conflict is then approached in a multidisciplinary way and the resolution of the conflict is not limited to a court decision. The search for a solution in domestic violence cases includes the possibility of giving alternatives to the parties (e.g. criminal mediation). The alternatives for dispute resolution incorporate ways to allow for a more direct communication between parties and a higher participation of the parties in the search for the resolution of the conflict. This technique began to be used at the PPO in 2007.

The PPO recognizes the active role of NGOs in gender violence issues. Foundations and NGOs, for example, campaign against myths and values that lead to discrimination and violence against women.<sup>191</sup> Internal regulations establish the need for formal agreements to coordinate amongst state organizations and NGOs working on gender violence.<sup>192</sup>

OFAVyT and OVD collect data on the number of domestic violence cases dealt with by the PPO. The number of cases has almost tripled since data started to be collected by OFAVyT in the period 2009-2012.<sup>193</sup>

#### *3.3.3.4. Partial Observations*

Specialized units aimed at dealing with gender violence are the main mechanisms recently implemented to enable the exercise of rights by Victims. Specialized and multidisciplinary assistance is recommended in legal provisions. The Internet is perceived as another resource to enable the exercise of rights by Victims (by means of publishing a list of resources available for Victims). Yet, there is limited development on availability of forms (e.g. protective orders, private agreements) or platforms for Victims to start exercising their rights. Legal Organizations, multidisciplinary units, shelters, hospitals, and NGOs operate across the country, yet mostly centralized in the City. All these organizations serve the purpose of assisting Victims in exercising their

<sup>190</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12* Annex III.

<sup>191</sup> e.g. the advertisement of FEIM on myths of how relationships are formed, see FEIM, “Mitos del amor romántico.”

<sup>192</sup> Agreements are signed, e.g. between the PPO and NGOs, between OFAVyT or OVD and the City police, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*, 5, 12.

<sup>193</sup> For a report on the number of Victims assisted by OFAVyT from 2010 to 2012, see OFAVyT, “Informe de Noticias OFAVyT”; “OFAVyT - Oficina de Asistencia a la Víctima y Testigo.”



rights. Programmes are implemented not only to assist Victims, but also to assist service providers in the proper performance of their activities. Coordination amongst programmes is also recommended at an international, federal, and City level. Agreements amongst state organizations have been signed though there is insufficient information on how this coordination is being implemented. Consequently, even when many resources become available to Victims there is still room for further incorporation of options that allow Victims to enable their rights without needing to depend entirely on a state organization. Examples of other initiatives can be found in the attempts of other jurisdictions.<sup>194</sup>

### 3.3.4. Enforcement

This sub-section on the enforcement of the right of women to a life free of discrimination and violence studies the legal provisions that assist Victims to execute this right. It analyses the enforcement of this right together with the design of the legal procedure in terms of new forms, cost, and simplicity.

#### 3.3.4.1. *Constitutional and International*

The Argentine Constitution recognizes the right to freedom of thought, conscience, and religion.<sup>195</sup> The limit to the right to freedom is the public order, morality, and the injury of third parties.<sup>196</sup> The right to freedom, therefore, cannot be used to argue that women freely choose to be discriminated against or to be subject to violence. Gender discrimination and violence are not only detrimental for Victims but also for the children witnessing the violence<sup>197</sup> and the community (i.e. in terms of human capital lost and democratic participation).<sup>198</sup> This reinsures the capacity of states to enforce non-discriminatory and non-violent behaviours against women.

Trained and informed service providers with the capacity to enforce legal provisions, together with mechanisms to assess the effectiveness of policies assigned to punish those who violate the right of women to a life free of discrimination and violence, are considered important state duties by human rights treaties. The Convention of Belém do Pará requires from states the implementation of specific measures and programmes to inform and train service providers who can enforce legal provisions (e.g. judges, policemen) on matters of violence against women.<sup>199</sup> The states are also called upon to collect statistics to assess the effectiveness of the measures to punish those who exercise violence against women.<sup>200</sup>

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<sup>194</sup> For information on initiatives taking place in Canada (Ontario) and in the US (California and Louisiana), see Ministry of the Attorney General Ontario, “V/WAP”; Family Court East Baton Rouge, “SelfHelp Desk at the 19th JDC Court House”; California Courts, the Judicial Branch of California, “Online Self-Help Center.”

<sup>195</sup> Congreso General Constituyente, *Constitución Argentina*, art 14.

<sup>196</sup> Ibid., art 19; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 106–7.

<sup>197</sup> UNTS, CEDAW, arts 5(b) and 16(d)(e); UNTS, *Convention of Belém Do Pará*, art 8(d).

<sup>198</sup> UNTS, *Convention of Belém Do Pará*, art 8(f).

<sup>199</sup> Ibid., art 8(c).

<sup>200</sup> Ibid., art 8(h).

### 3.3.4.2. Federal

Law 26485 introduces more tools for women to enforce their right to a life free of discrimination and violence. Article 35, for example, addresses the possibility for women to claim in civil jurisdictions for damages and losses. The law calls for a transparent and expeditious proceeding by creating specialized and multidisciplinary state organizations, opening police stations for women, implementing a help-line, and formulating clearly the responsibilities of each sector and the time frame to comply with duties. Police stations for women correspond to a belief that there will be more equal treatment between individuals of the same gender, and hence a better understanding of the situation expressed by Victims. In addition, Law 26485 incorporates the need to provide training for service providers, administrative personnel, judges, and the police.

Specialized and multidisciplinary assistance to resolve domestic violence cases is recommended by international and federal legal provisions. However, any type of decision made by judges or prosecutors, regarding the enforcement of remedies (e.g. preventive measures) has to consider family dynamics. Remedies have to be monitored and efficiency has to be checked. For example, even when the letter of the law suggests the enforcement of temporary measures as a short-term remedy, the enforcement becomes contradictory when the consequences are more detrimental for Victims. Therefore, preventive measures need to be granted and enforced with a holistic approach to the problem, the family dynamics, and the consequences that the measure might trigger. Judges, moreover, play a key role in enforcing measures and in deciding to what extent these measures contribute to the resolution of conflicts and decrease the activation of new conflicts.<sup>201</sup>

The judicial system is the main body in charge of enforcing legal provisions, and the composition of this body can be relevant for understanding enforcement of the right of women to a life free of discrimination and violence. In 1970, Argúas was the first Argentine woman to be appointed to the Argentine Supreme Court (and the first woman in the region appointed to such a position).<sup>202</sup> The number of women in the judicial system has grown significantly since then.<sup>203</sup> However, women are still outnumbered when counting the number of men and women in higher positions within the judicial system.<sup>204</sup> A recent study mentions reasons why women tend not to be employed in higher positions.<sup>205</sup> These reasons include, amongst others: women tend to apply less frequently for higher positions, women are less career-oriented, women decide on their careers later than men, women have less confidence in being appointed and hence decide not to apply, and women are at a disadvantage with men

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<sup>201</sup> Medina, “Duración de las medidas en violencia familiar.”

<sup>202</sup> France was the first country to appoint a woman judge in 1946, see Schultz and Shaw, *Gender and Judging*, 8.

<sup>203</sup> For an empirical study addressing the characteristics of women in the judicial system, especially within family courts in the City, see Kohen, “Family Judges in the City of Buenos Aires: A View from within.”

<sup>204</sup> Oficina de la Mujer, “Informe: Mapa de Género de la Justicia Argentina.”

<sup>205</sup> Schultz and Shaw, *Gender and Judging*.

due to family duties.<sup>206</sup> Some scholars state that these reasons, which are based on stereotypes, will change slowly with time.<sup>207</sup> Gender differences, indeed, can also be observed amongst lawyers.<sup>208</sup>

As the number of women integrating into the judicial system increases, the question that arises is whether this reality makes any difference in the granting of justice. Research indicates that decisions drafted by women judges are different due to their higher concern for the well-being of parties, their greater sensitivity (especially in issues involving minority groups), and their better use of the alternative dispute resolution mechanisms.<sup>209</sup> A study shows that women judges tend to be more severe in applying penalties to those perpetrators of violence against women, if compared to men.<sup>210</sup> Women, consequently, were found to perform better in activities related to their social role. In words used by Kohen in a study at City family courts, “Women are frequently in charge of areas related to the roles they have traditionally performed within the family.”<sup>211</sup>

A study carried out in Argentina between 2006 and 2007 looks at the extent to which Argentine judges use gender arguments in their rulings. This study shows that gender arguments are hardly ever used, regardless of the gender of judges.<sup>212</sup> However, another study based on interviews conducted with women judges shows that these judges claim to work with a gender perspective, caring for women’s rights.<sup>213</sup>

Judges are accountable to the people for the provision of impartial court decisions. The Women’s Office organizes workshops for members of the judicial system on how to perform with a gender perspective. These workshops, furthermore, increase transparency and accountability. A satisfaction survey is provided to the participants of the workshop. The Women’s Office also makes accessible through its website all regulations related to gender discrimination topics. A link is available to court decisions, yet the accessibility is not open to the public and requires a username and password.<sup>214</sup> The work of NGOs should not be left aside. For example, Transparency International in Argentina works towards improving transparency by providing tools to people so as to be able to control the activities of those in power.<sup>215</sup>

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<sup>206</sup> Ibid., 19–20.

<sup>207</sup> Ibid., 19; referring to the work by Schultz and Malleson, “Prospects for Parity: The Position of Women in the Judiciary in England and Wales.”

<sup>208</sup> Schultz and Shaw, *Gender and Judging*, 21; referring to the work of Bonelli, “Gender and Difference Among Brazilian Lawyers and Judges”; and to the work of Bolton and Muzio, “The Paradoxical Processes of Feminisation in the Professions: The Case of Established, Aspiring and Semi-Professions.”

<sup>209</sup> Schultz and Shaw, *Gender and Judging*, 27–33.

<sup>210</sup> Ibid., 33.

<sup>211</sup> Kohen, “Family Judges in the City of Buenos Aires: A View from within,” 113.

<sup>212</sup> Gastrón, Amante, and Rodríguez, “Gender Arguments and Gender Perspective in Legal Judgments in Argentina.”

<sup>213</sup> Kohen, “What’s in a Label? Argentine Judges’ Reluctance to Call Themselves Feminists,” 429.

<sup>214</sup> Oficina de la Mujer, “Oficina de la Mujer (OM).”

<sup>215</sup> Transparency International, “Poder Ciudadano.”

### 3.3.4.3. City

The City has assumed jurisdiction over new conflicts. The rapid growth of cases demanded a redesign in the way in which to deal with the enforcement of decisions granted. The City Contravention Code created the Monitoring and Coordination Office of the Enforcement of Sanctions to control the enforcement of court decisions granted by the twenty-four courts handling contraventions in the City.<sup>216</sup> Judges have to refer every court decision to this office, while the office assists the judicial system in the design of better ways to enforce court decisions.<sup>217</sup>

#### 3.3.4.3.1. Public Prosecutor's Office

In 2012, the PPO incorporated specialized prosecutor units to investigate only domestic violence cases with high risk.<sup>218</sup> These specialized units attempt to improve the immediate response of the PPO to situations of high risk that Victims might experience. OFAVyT and Victims are in charge of designing together an action plan to reduce the risk and to strengthen Victims in their efforts to cope with the legal procedure.<sup>219</sup> OFAVyT is required to accompany Victims from the initiation of the case until its conclusion.<sup>220</sup> Internal regulations suggest the need for more precise ways in which to assess the risk to Victims, recognizing the difficulty in this matter due to two main factors: the emotional ties relation with the accused and a natural resistance to make problems public.<sup>221</sup> The PPO, consequently, designed an index to measure the risk to Victims. This index is meant to assist prosecutors in the granting of preventive measures.<sup>222</sup> OFAVyT is the division assigned to measure the risk to Victims of serious violence and to communicate the results to prosecutors.<sup>223</sup> The risk measurement deals with the danger of physical harm (e.g. homicide); yet, an index to assess the risk of severe damage to Victims who experience psychological violence (and other types of violence) is still under development.<sup>224</sup>

Prosecutors have to consider the extent to which Victims are strengthened to face the accused in mediation. Before deciding whether mediation will be suitable, prosecutors need to request the opinion of OFAVyT to be delivered through a report, where

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<sup>216</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 120; Poder Judicial de la Ciudad de Buenos Aires, Consejo de la Magistratura, *Resolución N 11/PJCABA/CMCABA/05*.

<sup>217</sup> Poder Judicial de la Ciudad de Buenos Aires, Consejo de la Magistratura, *Resolución N 11/PJCABA/CMCABA/05*.

<sup>218</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 17/11*.

<sup>219</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 88/07: Manual Operativo OFAVyT*, pt. 1.1; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*, 6.

<sup>220</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*, 8.

<sup>221</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10* citing the "Guías de Santiago sobre Protección de Víctimas y Testigos" of 2008.

<sup>222</sup> For a list of the studies used to develop the scale to assess the risk to Victims, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 531/12*, 8.

<sup>223</sup> *Ibid.*, 11.

<sup>224</sup> *Ibid.*, 9.

experts speak on the convenience and feasibility.<sup>225</sup> The police and the PPO toll-free number are available resources for Victims if abusers do not comply with the agreements that result from mediation. The City Public Defender checks that parties comply with agreements.

#### *3.3.4.4. Partial Observations*

The judicial system is the main power in charge of enforcing legal provisions. Therefore, the importance of having a judicial system informed and trained to handle gender violence cases is addressed in legal provisions. Gender stereotypes, however, also colour the role of women in the judicial system. The assistance provided to Victims is meant to be specialized and multidisciplinary. Judges, when enforcing legal provisions, need also to consider the problem in a holistic way, because in gender violence cases some measures may result in a higher detriment to Victims even when properly in line with legal provisions. Human rights treaties request from states the implementation of programmes to assess the effectiveness of the measures to punish abusers. However, there are limited signs of a concrete application of this request (e.g. the initiative by the City Public Defender to see that parties comply with probations and agreements derived from mediations). The enforcement of legal provisions is focused on the state, mainly the judicial system and the police. No other attempts, such as strategies presented in the United States to give people a degree of control or tools to enforce, are present in Argentina.<sup>226</sup>

### **3.4. Right to Access to Justice**

#### **3.4.1. Enhancement**

This sub-section, on the enhancement of the right to access to justice, studies the advancement in legal provisions towards channels to access justice. It focuses on legal provisions introduced to eliminate restrictions and to create real opportunities for Victims to access to justice. This sub-section also considers the way in which new legal provisions incorporate new rights or clarity on already existing rights related to the right to access to justice.

##### *3.4.1.1. Constitutional and International*

In Argentina, the right to access to justice was originally assimilated to the right to trial. The developments in legal provisions show how this right was extended with the recognition of intermediate ways in which to seek justice and alternative mechanisms by which to be granted justice. The incorporation of human right treaties plays a significant role in broadening this right and in addressing the concept of equity by introducing principles considering particularities of vulnerable groups.

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<sup>225</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*.

<sup>226</sup> e.g. a list of sex offenders published on the Internet is available at The US Department of Justice, “National Sex Offender Public Website.”

The first Argentine Constitution of 1853 addressed the right to access to justice in article 18 when protecting “the defence by trial of persons and rights.”<sup>227</sup> This article remains unchanged, and amendments to the Constitution did not modify the approach of the text to access to justice. Some scholars argue, however, that the right to access to justice is implicitly recognized by article 33.<sup>228</sup>

The right to access to justice gained certainty in 1994 with human rights treaties, such as the American Convention on Human Rights (Pact of San José). The Convention introduced the right of Victims to expeditious and simple means by which to request protection from the judicial system when a right is violated.<sup>229</sup> The principle of full equality, also incorporated in the Argentine Constitution through human rights treaties, stresses the inclusive element that all people deserve the protection of rights by obtaining an equal access to justice for all. This principle is strengthened with the incorporation of group-oriented human rights treaties addressing specific groups in society. Such is the case of CEDAW and the Convention of Belém do Pará addressing, and amongst other rights, the right to access to justice for Victims. These conventions highlight the importance of access to justice to eliminate violence against women, and Argentina, in response to its international duty, has to implement public policies to provide suitable channels to allow Victims to overcome obstacles to access to justice and to ensure a responsive judicial system to the specificities of this illicit conduct.<sup>230</sup>

The state is therefore called upon to provide adequate mechanisms that are easy enough for people to understand and make use of in a reasonable amount of time and without any type of discrimination.<sup>231</sup>

### 3.4.1.2. Federal

The narrow reception of the Argentine Constitution to the right to access to justice is broadened by the international duties that require the delivery of tangible ways for Victims to seek justice. The influence of human rights treaties can be perceived by looking at the way in which federal legal provisions address the right to access to justice. The Argentine Code of Criminal Procedure, as enacted in 1991, provides a

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<sup>227</sup> For the text of the Argentine Constitution of 1853 and subsequent amendments, see Argentina Histórica, “Argentina Histórica.”

<sup>228</sup> Art 33 of the Argentine Constitution includes implicit rights that derive from the principle of the sovereignty of the people and from the republican form of government adopted by Argentina. Art 33 has been referred to by scholars and judges to recognize the right to access to justice, the right to information, the right to life, the right to human dignity, the right to the truth, and the right to assemble. Art 33, moreover, gives dynamism to the Constitution, because it allows the recognition of rights and guarantees that are in line with current traditions and understandings of society when in line with the principles of sovereignty and the republican form of government, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 299–308; Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 52.

<sup>229</sup> UNTS, *Pact of San José*, art 25(1).

<sup>230</sup> Ibid., arts 7(d) and 8(d); UNTS, *CEDAW*, art 25; General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 6 (Executive Summary), 37-39 and 56.

<sup>231</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 468.

narrow approach to access to justice, while the enactment of Law 26485 broadens the approach by following international standards.

The Argentine Code of Criminal Procedure contemplates an economic constraint that victims (and witnesses) might encounter when accessing and participating in a legal procedure. Article 79(b) states that victims, when summoned by the authority, can receive monetary support to cover transportation costs.<sup>232</sup> The focus of the Argentine Code of Criminal Procedure deals primarily with the necessities of the judicial system rather than those of victims. The code locates victims and witnesses at the service of the judicial system and not the other way around. The change in paradigm perceived in the development of the right to access to justice gradually switches this relation. The judicial system gradually adjusts its service to the needs of victims. An example of this transition can be seen again with the enactment of Law 26485 in 2009 and in its Executive Order 1011/2010.

Law 26485 emphasizes that in order to eradicate violence against women, it is important to promote and ensure access to justice for women who suffer violence.<sup>233</sup> The law tackles two common obstacles to access to justice: one aiming at ensuring that Victims have tools to seek justice, and the other aiming at ensuring that Victims are granted justice. The law seeks the design and implementation of public policies by the three branches of power to ensure that women have access to a system that provides assistance in a timely and appropriate way (expeditious, transparent, and efficient) and to a judicial system especially adjusted to tackle violence.<sup>234</sup> The text of the law broadens the places where Victims can seek justice by promoting the creation of services that provide free,<sup>235</sup> specialized, and holistic assistance.<sup>236</sup> Violence against women promotes social inequality, lack of access to justice, and discriminatory values immersed in society,<sup>237</sup> therefore, the Ministry of Justice has called for agreements amongst sectors from different jurisdictions, including the PPO, bar associations, law faculties, and other organizations.<sup>238</sup> Integrated public policies are required to tackle this dynamic.<sup>239</sup> Furthermore, women can submit complaints without legal representation and in any court regardless of jurisdiction and judicial instance.<sup>240</sup>

Access to justice, within the spectrum of Law 26485, entails free legal assistance, guarantee of due process, positive measures to ensure the elimination of procedural costs, and effective access to the judicial system.<sup>241</sup> Victims have the right to receive all

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<sup>232</sup> Congreso de la Nación Argentina, *Código Procesal Penal de la Nación*, art 79(b).

<sup>233</sup> Congreso de la Nación Argentina, *Ley 26485*, art 2(f).

<sup>234</sup> *Ibid.*, arts 7(c), 11, and 20.

<sup>235</sup> *Ibid.*, art 3(i); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 20.

<sup>236</sup> Congreso de la Nación Argentina, *Ley 26485*, arts 9(d) and 16(a).

<sup>237</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 160.

<sup>238</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 16(a).

<sup>239</sup> Congreso de la Nación Argentina, *Ley 26485*, art 7; see a comment to art 7, with a special highlight on how public policies are needed to eliminate violence against women, at Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 158–67.

<sup>240</sup> Congreso de la Nación Argentina, *Ley 26485*, art 21; Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>241</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 2(f).

needed recourses (judicial, administrative, and any other that can guarantee the effective exercise of rights) from every sphere of the state.<sup>242</sup> Law 26485 enables women to activate their rights by introducing different options on where and how to do so. This law instructs that if a woman considers herself a victim of violence, she can obtain access to justice by calling a toll-free help line,<sup>243</sup> approaching the police station for women or any police station, approaching any court, and approaching a Legal Organization, such as the OVD.<sup>244</sup> It is interesting to note that the law recognizes the difficulties for some Victims to submit complaints and hence obliges those who provide assistance and social, educative, and health services, in the private and public spheres, to submit a complaint when due to their tasks they are aware of an event of violence against women.<sup>245</sup> Police officers, for example, have to forward within twenty-four hours complaints where evidence indicates that women may be subject to domestic violence.<sup>246</sup>

On October 1, 2014, Argentina adopted a Civil and Commercial Code (Civil and Commercial Code), which took effect on August 1, 2015.<sup>247</sup> Within family law, the Civil and Commercial Code includes procedural standards, showing a specific interest towards access to justice and dispute resolution for conflicts between family members.<sup>248</sup> Article 706 places the principle of access to justice as a central goal of the family process: "... the rules governing the procedure must be applied to facilitate access to justice, especially for vulnerable people, and to achieve peaceful resolution of conflict ... ." The Civil and Commercial Code changed the traditional paradigm where the subject of private rights is "the person" to a paradigm that addresses that actor in an egalitarian way, without discrimination based on constructed identities, such as gender, religion, place of birth, or wealth.<sup>249</sup> The new text makes specific references to access to justice and specifically to vulnerable groups, amongst others, women.<sup>250</sup>

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<sup>242</sup> Ibid., art 2(f).

<sup>243</sup> The City also implemented a hotline, 0800-66MUJER, which registered in a six-month period 5,500 calls for help from Victims.

<sup>244</sup> The Human Rights Committee recommends the creation of organizations, similar to OVD, in the rest of Argentina. Medina et al. state the importance of the judicial system in implementing strategies to assist and provide guidance to Victims in different geographical areas, and mentions how the OVD served as inspiration for other initiatives, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 38–39, 197.

<sup>245</sup> Congreso de la Nación Argentina, *Ley 26485*, art 18; moreover, the duty of third parties to report family violence events is not new, and was already recognized by the first law in the country addressing the issue of violence within the family when the victim is a child, elderly, or disabled, see Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 2; for a comment on the duty to report family violence acts and on arts 2 and 6 Law 24417, see also Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 316–30, 377–87.

<sup>246</sup> Congreso de la Nación Argentina, *Ley 26485*, art 23.

<sup>247</sup> This paragraph is borrowed partly, and sometimes verbatim, from the work of Marotta and Parise, "On Codes, Marriage, and Access to Justice: Recent Developments in the Law of Argentina"; Congreso de la Nación Argentina, *Código Civil y Comercial Argentino*.

<sup>248</sup> The Civil and Commercial Code does not provide a conceptualization of what "family procedures" encompass, see Medina, "El proceso de familia," 440–49.

<sup>249</sup> Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci, "Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación," 5.

<sup>250</sup> Ibid.



### 3.4.1.3. City

The Argentine Constitution understands access to justice as access to a fair trial. The City Constitution, being the most recent constitution in the country, explicitly incorporates the term “access to justice.” Article 12(6) states the obligation of the City to grant access to justice to all. It also addresses the right to a fair trial which keeps the importance of the fundamental principle of being judged by a judge appointed by law and prior to the alleged facts, together with the principles of legality, proportionality, impartiality, transparency, and the rights to appeal and to present a defence.<sup>251</sup> A special emphasis is given to the monetary constraints that people may face when attempting to obtain access to justice, and hence, the City Constitution mentions the need for having a system that provides pro bono attorneys and in *forma pauperis* forms (i.e. the right to sue without paying submission fees).<sup>252</sup> The text of the City Constitution therefore recognizes the negative relation between poverty and access, and contemplates the poverty and inequality rates which have been a historical characteristic of the City.<sup>253</sup> Along these lines, the City Constitution addresses the need to promote an adjusted economic and human growth, promoting an equitable distribution amongst different sectors.

The 2006 debates of the City constitutional convention are interesting because they show the way in which access to justice began to be contemplated in the political discourse.<sup>254</sup> Furthermore, access to justice was no longer assimilated to a fair trial, rather it included considerations on the importance of legal awareness by the people, and the need for a system that actually grants justice to all. Hence, the debates reinforced the presence of the value of justice in contemporary societies and propose alternative ways in which to achieve it.

Coordination amongst sectors is becoming a recognized necessary element to achieve social goals, and it may be sensed in the current legal provisions. The City Constitution states that the three branches have to work together to avoid the denial of justice.<sup>255</sup> Even though the executive and legislature cannot exercise judicial functions, they ought to provide the judicial system with the necessary resources to ensure access to justice and conflict resolution within a reasonable amount of time and at a realistic monetary cost.

The CCPC facilitates access to justice by reducing bureaucratic barriers, and it then allows complaints to be submitted orally or in writing.<sup>256</sup> Complaints are an

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<sup>251</sup> Convención Constituyente, *Constitución de la Ciudad*, art 13(3).

<sup>252</sup> Ibid., art 12(6).

<sup>253</sup> Ibid., art 18; for a comment on how the City Constitution addresses equity in human and economic development, see Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 71.

<sup>254</sup> Convención Constituyente, “Debates de la Convención Constituyente y Constitución de la Ciudad Autónoma de Buenos Aires.”

<sup>255</sup> Convención Constituyente, *Constitución de la Ciudad*, art 108.

<sup>256</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 82.

informative act and do not include a formal accusation.<sup>257</sup> Public officers who receive complaints have the duty to record the identity of the accuser, and the Argentine Criminal Code provides penalties for those who falsely accuse.<sup>258</sup> When criminal complaints are received by police officers, they have the duty to immediately refer complaints to the PPO.<sup>259</sup> Police actions assist the PPO, and they have to secure those elements that allow for the reconstruction of facts.<sup>260</sup>

Criminal complaints can be submitted by anyone who becomes aware of illicit conduct.<sup>261</sup> This can be considered a way in which to strengthen access to justice of vulnerable groups, because often the same marginalization deprives victims of thinking of the judicial system as a place that protects rights. The language barrier to access to justice has also been addressed in the text of the CCPC, which states the appointment of an interpreter when the accused cannot communicate in the Spanish language.<sup>262</sup> The provision refers only to the accused, though it could be extended to victims since they also participate in the process. Yet, these are signs of a system that still believes in the need to provide more protection to the accused than to the victims. Lastly, in view of a transparent access to justice, the CCPC incorporates the principle of “objectivity,” and the PPO has to limit the investigation to data and facts, avoiding self-interest and prejudice.<sup>263</sup>

#### 3.4.1.3.1. Public Prosecutor’s Office

The right to access to justice was introduced in the policy agenda to design the PPO. The PPO, within its functional autonomy, includes in its new design the Access General Secretariat.<sup>264</sup> The latter coordinates the following divisions: (i) OFAVyT; (ii) Access to Justice, which coordinates the UODs;<sup>265</sup> and (iii) Reception of Complaints

<sup>257</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 409.

<sup>258</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, arts 109 and 245; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 409.

<sup>259</sup> However, police officers have the power to deal with urgent matters when needed to prevent a greater harm, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 84 and 86.

<sup>260</sup> Ibid., arts 86–90; Congreso de la Nación Argentina, *Código Penal de la Nación*, art 184(2)(4); Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 411–20.

<sup>261</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 79 and 80.

<sup>262</sup> Ibid., art 40.

<sup>263</sup> Ibid., art 5; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 127–30.

<sup>264</sup> The other two secretariats created are the Political Criminology and Strategic Planning General Secretariat, and the Coordination General Secretariat, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “Nuevo Diseño Organizacional del Ministerio Público Fiscal,” 4; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 88/07: Manual Operativo OFAVyT*.

<sup>265</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 44/07*.

Office.<sup>266</sup> Every division was established by internal regulations<sup>267</sup> and has its own procedure manuals, also created by an internal regulation.<sup>268</sup>

The CCPC was perceived by the PPO as a change in paradigm that called for internal adjustment.<sup>269</sup> It immediately influenced the functioning of the PPO and its approach to the legal procedure preserving the right to due process.<sup>270</sup> Internal regulations highlight the need to overcome the lack of trust of people in the judicial system in order to transform the PPO into a place for them to request and receive an answer to protect their rights, i.e. a place that encourages access to justice.<sup>271</sup>

#### 3.4.1.4. *Partial Observations*

The developments in the way in which legal provisions approach the right to access to justice in the legal provisions are important. They show a change in paradigm on the inclusive element introduced primarily by international provisions, but quickly adopted domestically. This inclusive element incorporates the groups that have been shown to have difficulties in obtaining access to justice. The wording of legal provisions has also changed, and what in previous times was assimilated to fair trial today is given a more comprehensive term: access to justice. This comprehensiveness not only broadens the spectrum of access to justice beyond the access to trial, but it also gives relevance to all actors involved in their “paths to justice”<sup>272</sup> (e.g. accused, accuser, providers). The approach to legal provisions, however, is focused on accessibility in terms of location and means to access, such as organizational design, courts, and providers. More can be done to improve the wording of the legal provisions to make them more accessible to the level of understanding of the entire community. This can become an important tool of LE because it allows people to make a free decision on the use of their rights.

#### 3.4.2. Awareness

This sub-section on the awareness of the right to access to justice analyses how Victims and providers are being considered by legal provisions. On the one hand, it contemplates the way in which legal provisions incorporate different forms to

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<sup>266</sup> For the internal manual of the Reception of Complaints Office, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 435/12* annex III; moreover, the division was reorganized and redesigned to improve the accessibility of people to the PPO, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 82/07*.

<sup>267</sup> OFAVyT was created after an initiative brought by the Attorney General’s Office and started operating in 2007, see Consejo de la Magistratura CABA, *Resolución CM N 169/07*; Consejo de la Magistratura CABA, *Resolución CM N 436/07*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 88/07: Manual Operativo OFAVyT*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 435/12* annex I.

<sup>268</sup> Rochelle, “OFAVyT-PR-01: Procedimiento de intervención en casos con indicadores de violencia doméstica.”

<sup>269</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 96/07*.

<sup>270</sup> e.g. orality and decrease in bureaucratic requires, *ibid*.

<sup>271</sup> *Ibid*.

<sup>272</sup> The term “paths to justice” was first used by Genn in, Genn, *Paths to Justice: What People Do and Think about Going to Law*.

communicate the right to access to justice, i.e. what means and techniques are introduced to communicate this right to people. On the other hand, it considers the role given by legal provisions to providers due to their source of power to suggest and implement further campaigns and strategies towards the awareness of the right to access to justice.

#### 3.4.2.1. *Constitutional and International*

Having a judicial system at the service of the population strengthens the approach of legal provisions to ensure that people become aware of their rights and know the options available to exercise them. LE uses legal provisions as a tool to empower. Hence, awareness of those rights and developments towards improvement become an essential element. Human rights treaties recognize the importance of providing legal information to victims and mechanisms by which to achieve remedies when claiming for rights.<sup>273</sup>

The Brasilia Regulation states the importance of providing access to a legal procedure that is understandable to the parties.<sup>274</sup> The text highlights the importance of proper communication between the judicial system and those who participate in the process. It stresses the need for the judicial system to ensure that communication is understood by the parties, making them aware of their available choices and the implications of each choice. Therefore, any means of communication, such as notices, summons, court resolutions, and oral hearings, need to be adapted to the understanding of the parties.<sup>275</sup>

The Brasilia Regulation emphasizes the importance of the implementation of concrete actions to provide information on rights to the vulnerable population, as a necessary prerequisite to access to justice. On the one hand, the letter of the law needs to be understood by vulnerable groups; while, on the other hand, providers play a fundamental role in communicating legal provisions to people.<sup>276</sup>

#### 3.4.2.2. *Federal*

Law 26485 and Executive Order 1011/10 highlight the importance of the incorporation of educational campaigns and training aimed at informing, amongst others, Victims of their rights and resources and services provided by the state.<sup>277</sup> Even when Executive Order 1011/10 does not make reference to a suggested design by which to perform the educational campaigns, legal provisions establish that those campaigns have to take place where Victims perform their inter-personal relations.

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<sup>273</sup> UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

<sup>274</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*.

<sup>275</sup> *Ibid.*, paras. 58–61.

<sup>276</sup> *Ibid.*, paras. 26–27.

<sup>277</sup> Congreso de la Nación Argentina, *Ley 26485*, art 10(1); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 10(1); Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 179–80.

### 3.4.2.3. City

The CCPC gives, during the preliminary investigation stage, the right to parties to participate in every formal act, and to be notified of some acts expressly mentioned by legal provisions.<sup>278</sup> Furthermore, criminal cases are public, allowing parties to obtain access when requested.<sup>279</sup> The right of parties to participate in formal acts obliges the public officers to effectively inform them,<sup>280</sup> inasmuch as parties can only decide whether they want to participate if they are properly informed of events. Parties can also propose prosecutors to perform certain evidentiary proceedings.<sup>281</sup> Prosecutors, consequently, have to order those evidentiary proceedings if helpful for the preliminary investigation stage<sup>282</sup> (i.e. when the element requested by parties to be incorporated helps prosecutors verify the facts under investigation, or when it helps to identify possible involved actors).<sup>283</sup> During the preliminary investigation stage, if prosecutors find that it is temporarily impossible to collect evidence needed to refer the case to trial, the investigation can be momentarily closed (for a period of two years). This time allows prosecutors to gather the needed evidence, and afterwards submit cases to trial.<sup>284</sup> Consequently, it is important that parties are properly informed on their right to participate in the process.

Technologies, such as the Internet, are used to increase the awareness of people of their right to access to justice. The City, for example, has to make regulations and court decisions public. Court decisions are incorporated in the web pages of the City Tribunal. Parties are protected since the law requires anonymity,<sup>285</sup> and they are public only after the parties become aware of the decisions.<sup>286</sup>

#### 3.4.2.3.1. Public Prosecutor's Office

The PPO, in 2007, started operating under the new paradigm incorporated by the CCPC. The PPO implemented techniques to make people aware of its existence as a pre-condition to becoming a place accessible and of service to the community. Surveys were conducted to measure the extent to which the community knew about its existence. The first surveys from 2007 show that 57.5 per cent ignored the

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<sup>278</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 96.

<sup>279</sup> *Ibid.*, art 102.

<sup>280</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 455.

<sup>281</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 97.

<sup>282</sup> For a note on the need to have an organization to control decisions made by prosecutors, see Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 460–62.

<sup>283</sup> *Ibid.*, 461.

<sup>284</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 208.

<sup>285</sup> On the right to privacy, intimacy, and confidentiality, see Convención Constituyente, *Constitución de la Ciudad*, art 12(3).

<sup>286</sup> CSJN, *Resolución N 642/2004*.

existence of and the service provided by the PPO.<sup>287</sup> In response to this reality, a unit was created to develop advertisements to promote the existence of the PPO, the services provided, and the rights that could be claimed.<sup>288</sup> Advertisements to create awareness focussed on the geographical presence and content. Units were located in different sectors (decentralization) and a communication design programme was implemented.<sup>289</sup> Graphic designers were consulted for the latter and the PPO incorporated those suggested techniques aimed at the assimilation of messages by potential users.<sup>290</sup> The Internet was also incorporated as an important tool to create awareness of the existence of the PPO and rights. Web pages offered information on how to submit a complaint and on how the PPO may be a place to protect rights.<sup>291</sup> Lastly, the PPO incorporated two programmes where prosecutors (i) go to schools to inform secondary students of their rights and channels for claim, and (ii) go to periodic neighbourhood meetings to, amongst other things, inform neighbours about the service provided by the PPO (named PPO and the Neighbours programme).<sup>292</sup> All these means aimed to generate awareness of the choices available to access to justice.

#### 3.4.2.4. *Partial Observations*

Access to justice is the right of people to seek and be granted justice. Awareness of this right is related to the awareness of the existence of the principle and existence of state organizations that function as doors to access. The awareness of access to justice is incorporated by legal provisions. Understanding and locating potential users are also considered necessary for the awareness of this right. Knowing the options provided by legal provisions and state organizations is also encouraged by recent legal provisions. The awareness, as treated by legal provisions, is directly related to increasing the participation of parties in the process. Advertisements, geographical location, and the use of the Internet are perceived as key tools to improve the awareness of the right to access to justice.

#### 3.4.3. **Enablement**

This sub-section on the enablement of the right to access to justice analyses legal provisions that facilitate the exercise of this right for Victims. It contemplates techniques introduced in legal provisions to make justice accessible, especially for Victims. Under this sub-section procedure becomes of major relevance, together with

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<sup>287</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 1/08*.

<sup>288</sup> Office of Institutional Relations, see Consejo de la Magistratura CABA, *Resolución CM N 737/07*.

<sup>289</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 1/08*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 2/08*.

<sup>290</sup> The PPO counted on the assistance of Cristian Dzwonik and his cartoon “Gaturro.” The renowned artist, also a resident of the City, voluntarily cooperated with the initiative by allowing the use of his character. For a brief biography and a list of web pages to his materials, see “Cristian Dzwonik”; moreover, this awareness policy was introduced through Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 2/08*.

<sup>291</sup> e.g. the PPO incorporated techniques to locate their website at the first place on the list that appears after a search is done on the Internet, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 1/08*.

<sup>292</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 72/08*, sec. IV.

the legal provisions that advocate for the creation of state organizations and tools that allow Victims access to justice.

### 3.4.3.1. *Constitutional and International*

The Brasilia Regulation stresses the proximity between the judicial system and vulnerable groups as a necessary element to allow the exercise of rights.<sup>293</sup> The Argentine Constitution incorporated in 1994 the figure of the ombudsman. This institution is a tool for victims to claim for rights.<sup>294</sup> The ombudsman controls, i.e. oversees, the functioning of the public administration and, therefore, protects the rights, guarantees, and interests of the Argentine Constitution.<sup>295</sup> The main tool available for the ombudsman to exercise its power is the capacity to become a party in court proceedings.<sup>296</sup> People can present non-judicial claims before the ombudsman. These claims can be submitted in person, by telephone, or through the website of the ombudsman. The procedure is free of charge and does not require legal representation.<sup>297</sup> The investigation starts once the ombudsman receives and accepts a claim (or by its own initiative). This investigation rectifies the alleged claims against the executive authority.<sup>298</sup> The procedure is informal<sup>299</sup> and does not affect the time period within which to submit a judicial or administrative action,<sup>300</sup> though if one of these actions is initiated, the ombudsman must cease the intervention.<sup>301</sup>

The ombudsman created a programme on gender rights, under its capacity to protect and promote human rights. This programme designs, implements, and evaluates every type of investigation and action by the executive on gender rights. Furthermore, it investigates and monitors the public policies implemented to improve the accessibility, consciousness, and economic and social support of victims. Within this programme the ombudsman investigates, collects information, and communicates with other state organizations and NGOs working on the subject. The ombudsman presents a report with all this information prescribing how gender rights are addressed by the executive. Consequently, it elaborates suggestions to improve gender equality.<sup>302</sup> The ombudsman created an audio-programme named *The People and Their Ombudsman* to inform individuals of the different agreements and developments made by the executive to improve the rights of people.<sup>303</sup>

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<sup>293</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, para. 42.

<sup>294</sup> General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” para. 88.

<sup>295</sup> Congreso General Constituyente, *Constitución Argentina*, art 86.

<sup>296</sup> *Ibid.*

<sup>297</sup> “Defensor Del Pueblo de La Nación.”

<sup>298</sup> Congreso de la Nación Argentina, *Defensoría Del Pueblo*, art 14.

<sup>299</sup> *Ibid.*, art 19.

<sup>300</sup> *Ibid.*, art 22.

<sup>301</sup> *Ibid.*, art 21.

<sup>302</sup> Defensor del Pueblo de la Nación, “Programa Institucional sobre Derechos de Género,” pts. 1–3.

<sup>303</sup> Defensor del Pueblo de la Nación, “La Gente y su Defensor. Programa N° 768.”

### 3.4.3.2. Federal

Human rights treaties also contribute to the development of services to assist Victims. The OVD, created by the Argentine Supreme Court, was formed in response to the international compromises assumed.<sup>304</sup> OVD was created to guarantee expeditious and free access to justice for Victims. OVD therefore operates twenty-four hours a day, seven days a week, and is in direct coordination with civil courts to provide immediate preventive measures of protection. OVD, moreover, gathers statistical data to assess the problem of violence against women in Argentina and to assist in policy design.<sup>305</sup> OVD becomes, for many Victims, the entrance door to their path to justice.<sup>306</sup>

Law 26485 incorporates the right of Victims to an access free of charge to enable their access to justice. Victims, regardless of income, are exempted from paying court fees, and can request pro bono attorneys to render legal representation free of charge.<sup>307</sup> Law 26485 motivates pilot projects on legal assistance and representation for Victims. These projects, through judicial resolutions, inaugurated new Legal Organizations to assist Victims, regardless of income, and establish coordination with other existing organizations.<sup>308</sup> The allocation of economic resources is needed to create solid grounds on which to enable the exercise of rights. Without ignoring this fact, Law 26485 requires that the General Budgetary Law of the Nation allocate the necessary economic resources to implement policies to comply with legal requirements.<sup>309</sup> This provision is important because without sustainable allocation of economic resources little can be obtained in the long term.<sup>310</sup> Medina et al. argue, however, that this law has not been accompanied by the economic resources needed to tackle, in a holistic way, the problem of violence against women.<sup>311</sup>

Law 23187,<sup>312</sup> on the requirements for the exercise of the legal profession in Buenos Aires, states that it is the duty of lawyers to accept and represent free of charge those who have no means to pay for a lawyer. The bar association appoints attorneys to cases<sup>313</sup> because it is its duty and faculty to promote and organize, in cooperation with

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<sup>304</sup> With references to arts 18 and 24 of the American Declaration of the Rights and Duties of Man; arts 8 and 10 of the Universal Declaration of Human Rights; and arts 8(1), 24, and 25(1) American Convention on Human Rights, see Corte Suprema de Justicia de la Nación, *Court Resolution N 33/04*.

<sup>305</sup> For an analysis on how OVD achieves international and national standards, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 22–43.

<sup>306</sup> *Ibid.*, 375.

<sup>307</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(i); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 3(i); Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 78.

<sup>308</sup> Defensoría General de la Nación, *Resolución DGN N 1186/12: Proyecto piloto de asistencia y patrocinio para víctimas de violencia de género*.

<sup>309</sup> Congreso de la Nación Argentina, *Ley 26485*, art 43.

<sup>310</sup> *Ibid.*, art 43; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 285.

<sup>311</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 285.

<sup>312</sup> Congreso de la Nación Argentina, *Requisitos para el ejercicio de la profesión de abogado*.

<sup>313</sup> *Ibid.*, art 6(b).



other public bodies, the assistance and representation of those who have no economic means.<sup>314</sup>

### 3.4.3.3. City

The City Constitution introduces the *in forma pauperis* forms and a pro bono system to enable the use of the right to access to justice for those with limited economic resources. These options exempt Victims from the legal representation costs and court submission fees. Quiroga Lavié understands that judges need to grant the *in forma pauperis* benefit in a broad sense and when in doubt, the principle *in dubio pro* access in favour of the *in forma pauperis* applies.<sup>315</sup> His argument is in line with the debates of the City constitutional convention.<sup>316</sup> These debates reflect a particular emphasis on including, in the constitutional text, a section addressing the reality of the people of the City who are “double-victims”: victims of a crime and victims of social injustice triggered by the bureaucracy and difficulties encountered by vulnerable groups to access to justice.<sup>317</sup> The constitutional convention states that access to justice is related to the value of Justice. This value can only be achieved by introducing a proper system that assists, mediates, and represents those whose rights need to be protected.<sup>318</sup> As stated by one of the participants,

Accessing to Justice should not be accessing a spider web. It is well known by the poor that they frequently reach access to Justice in their position of victims. It is not that access the one we are interested in facilitating. For this, it will be necessary to distinguish three sides: access to knowledge of the law, access to the system of administration of Justice, and access to Justice. Access to Justice entails the harmoniously combination of these three sides.<sup>319</sup>

Developments in procedural tools (e.g. forms) that are available for people to exercise rights are less present in Argentina and, until recently, also in the City. The procedural options for Victims are improved with the introduction of the PPO. The latter gives the chance to Victims to be in the process without legal representation and to receive assistance throughout the process. Furthermore, the CCPC provides the option to victims to present criminal complaints orally or in writing, turning this into an important element that enables the right to access to justice. It gives more flexibility and increases the chances that Victims will present complaints, because it provides them with tools that are in line with their capacity to exercise rights without needing to engage an additional skill (e.g. the skill of lawyers). However, other jurisdictions provide Victims the possibility to access to justice by completing forms designed by

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<sup>314</sup> Ibid., art 20(d).

<sup>315</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 52–53.

<sup>316</sup> On a note on the number of actors from different sectors participating at the constitutional convention, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 883.

<sup>317</sup> Convención Constituyente, “Debates de la Convención Constituyente y Constitución de la Cuidad Autónoma de Buenos Aires.”

<sup>318</sup> Ibid.

<sup>319</sup> Committee Report n 72, constituent Ms. Pierini, see *ibid.*

the judicial system, and in some cases Victims receive assistance from units located inside the courts to complete the forms.<sup>320</sup>

#### 3.4.3.3.1. Public Prosecutor's Office

The PPO proposes a design that aims at incorporating concrete paths that are accessible to the community.<sup>321</sup> For this purpose, UODs<sup>322</sup> were created together with a communications programme to make the community aware of the service. The Access to Justice division is dedicated to ensuring that people have real access to claim for their rights. Units are decentralized and therefore physically located in different districts (known as *comunas*)<sup>323</sup> and in places with easy access to public transportation.<sup>324</sup> UOD with decentralized units in the City are instructed to provide easy access to the judicial system and a better presence of the judicial system in the community. These units also aim at gaining trust and proximity with the community.<sup>325</sup> Additionally, there are mobile units, which move to the emergency neighbourhoods (known as *villas*) that are socially and economically isolated and experience high criminality rates. A toll-free number is also available to receive calls 24/7. The PPO website and e-mail service provides people with information and the chance to submit criminal complaints. Internal regulations, following legal scholarly work, stress the importance of improving the assistance by the police and the judicial system to increase access.<sup>326</sup>

OFAVyT is designed to assist Victims throughout the legal proceedings in their search for conflict resolution.<sup>327</sup> It is an innovative form of assisting Victims similar to the approach of OVD. OFAVyT takes intervention according to the provisions of the law and upon request by parties and prosecutors, and takes mandatory intervention on domestic violence cases. It also can take mandatory intervention in cases in which courts decide not to proceed due to lack of merit or cause. OFAVyT works with a group composed mainly of attorneys, physiologists, and social workers; and it provides a multidisciplinary assistance to Victims to help them cope with the legal procedure.

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<sup>320</sup> e.g. the self-help desk in Louisiana (Family Court East Baton Rouge, "Self-Help Desk at the 19th JDC Court House"); the online initiative in California (California Courts, the Judicial Branch of California, "Online Self-Help Center"); and the innovative initiatives to enable people to exercise rights using the Internet in the Netherlands (HiiL, "HiiL Innovating Justice").

<sup>321</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 2/08*.

<sup>322</sup> UODs were created by Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 44/07*; and it started operation as a pilot project, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 131/07*.

<sup>323</sup> Districts in the City are known as *comunas* and are territorial divisions in the City with capacity to perform acts related to planning, execution, and control.

<sup>324</sup> For a map of the City with the districts, see Buenos Aires Ciudad, "Buenos Aires en números, última actualización 23.10.2013," 3.

<sup>325</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 44/07*.

<sup>326</sup> Access to police stations and Legal Organizations is measured by the number of complaints submitted, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

<sup>327</sup> "OFAVyT - Oficina de Asistencia a la Víctima y Testigo."

The quality of the service delivered by providers is important in order to improve the right to access to justice and the right to conflict resolution. The PPO drafted a Guide for the New Civil Servant that aims to improve the enablement of these rights and includes information on all relevant organizations and legal provisions for their tasks.<sup>328</sup>

#### *3.4.3.4. Partial Observations*

This sub-section illustrates how, since 1994, state organizations have been incorporated by legal provisions to enable people to obtain access to justice. These changes reflect a special emphasis on those with fewer economic resources or with increased vulnerability to exercise rights. That is the case of Victims, and it explains the creation of OVD and OFAVyT so as to enable their access to justice. Proximity of legal provisions and state organizations to the community is also considered necessary to enable access to justice. An illustration of this is the decentralized strategy by UOD, and the incorporation of the ombudsman to allow people to receive protection with respect to constitutional provisions and control over the public administration. The initiatives incorporated under this sub-section may serve to provide people with the opportunity to voice their legal problems and participate in the preservation of social satisfaction. Yet, it is worth observing that other jurisdictions (e.g. the US) are advancing in this matter by locating units inside courts, providing already drafted forms.<sup>329</sup> Victims can complete these forms by themselves or with the assistance of trained personnel (e.g. law students), and ultimately submit the forms. The use of the Internet is becoming more popular, and other jurisdictions (e.g. the Netherlands) have designed platforms where people, by following directions, can draft their own claims.<sup>330</sup>

#### **3.4.4. Enforcement**

This sub-section on the enforcement of the right to access to justice studies the legal provisions that speak as to how Victims can execute their right to access to justice. The way legal provisions assist in forming an independent, transparent, and well-trained judicial system is introduced. The requirements are necessary tools for a system to grant access to justice for all. Procedural and administrative aspects are of major relevance under this sub-section because they introduce ways that can lead to the enforcement of the right to access to justice by avoiding, for example, unnecessary delays.

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<sup>328</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “Guía para el Ingresante.”

<sup>329</sup> e.g. in Baton Rouge the Family Court has a self-help desk where law students and lawyers assist petitioners in the drafting of forms. These forms are designed with the assistance of judges and, therefore, contain all the elements needed to be submitted, see Family Court East Baton Rouge, “SelfHelp Desk at the 19th JDC Court House.”

<sup>330</sup> HiiL, “HiiL Innovating Justice.”

#### 3.4.4.1. *Constitutional and International*

Victims have a right to petition the judicial system when their right to access to justice is violated. Article 14 of the Argentine Constitution constitutes one of the pillars of the liberal system adopted back in 1853.<sup>331</sup> This article, though lately enriched by international treaties, still contains fundamental principles for the Argentine society. It contemplates the fundamental rights of people to liberty and dignity. The right that every person (“inhabitant”) has to petition the authority (any, within the three branches of power) is one of the fundamental rights originally recognized.<sup>332</sup> This right to petition also extends to the obligation of the authority to render a response.<sup>333</sup>

#### 3.4.4.2. *Federal*

Law 26485 allows all judges, even without jurisdiction, to participate in domestic violence cases, materializing their right to access to justice.<sup>334</sup> Judges with no jurisdiction can receive complaints and grant preventive measures (e.g. protective orders).<sup>335</sup> Nevertheless, judges with jurisdiction over family matters have full jurisdiction over domestic violence cases.<sup>336</sup>

Judges gain major importance in enforcing the right to access to justice because they are the first to decide on what to do when made aware of domestic violence. Family judges receive from OVD necessary factual information to grant immediate measures.<sup>337</sup> The incorporation of OVD became important in allowing for the evaluation of facts for a proper access to justice (e.g. granting restraining orders).

Judges are called upon to provide an expeditious answer in view of the protection of Victims. The type of measures judges can enforce need also to be according to the type of violence and family dynamics, contemplating the risk that any action might awaken.<sup>338</sup> Therefore, the training of judges to deal with domestic violence cases becomes fundamental for a proper enforcement of the rights of Victims to access to justice. It is also important to accept the limitations of judges to enforce measures

<sup>331</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 64.

<sup>332</sup> Congreso General Constituyente, *Constitución Argentina*, art 14; the Argentine Supreme Court interpreted “inhabitant” as any person, national or foreigner, who resides within the territory of the country, and who has the intention of staying, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 65.

<sup>333</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 82–83.

<sup>334</sup> Congreso de la Nación Argentina, *Ley 26485*, art 22.

<sup>335</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 4; Congreso de la Nación Argentina, *Ley 26485*, art 26; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 342–89.

<sup>336</sup> Congreso de la Nación Argentina, *Ley 26485*, art 22; Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 1; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 221–24.

<sup>337</sup> For a note on the motivations for the creation of OVD, an analysis on how OVD serves the judicial system, and a description of the elements included in the reports created by OVD to assess the risk to Victims, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 337–41.

<sup>338</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 4; Congreso de la Nación Argentina, *Ley 26485*, arts 26–27; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 343–62.

within the family environment intended to change the behaviour of parties.<sup>339</sup> Law 24417, enacted in 1994, on the Protection against Family Violence,<sup>340</sup> consequently introduces a mediation phase within forty-eight hours after preventive measures are granted to promote educational or therapeutic programmes. These programmes aim at assisting the family in their conflict beyond the legal domain.<sup>341</sup>

Law 24417 provides judges with the capacity to request the assistance of public forces to enforce preventive measures.<sup>342</sup> This legal provision assists in overcoming the indifference of state organizations.<sup>343</sup> Police officers are requested to provide timely and accurate referrals because, due to their role in society, many times police stations are the place where Victims go to seek help.<sup>344</sup> Furthermore, Law 24417 introduces a mediation stage. Mediations are to take place two days after preventive measures are granted. This space aims to facilitate the dialogue between parties and assist in stopping violence within the family.

There is an ongoing discussion on the effectiveness of mediation mechanisms in relation with power disparities. Those who advocate against admitting mediation mechanisms stress the approach adopted by Law 26485 that prohibits the use of mediation for cases of gender violence. They understand mediation as a mechanism that is detrimental for the empowerment of Victims because it does not contribute to the enhancement of decision-making power.<sup>345</sup> Mediation, therefore, places Victims in a vulnerable situation. Consequently, an agreement made by parties in mediation lacks the free consent of Victims because that consent is manipulated by the accused,<sup>346</sup> due to the fear Victims may experience of violence and the lack of trust.<sup>347</sup>

Violence cannot be mediated;<sup>348</sup> however, mediation can provide Victims with a safe space to communicate with the accused, and it can be an effective method in getting the accused to begin a treatment programme (e.g. anger management counselling).<sup>349</sup> Some legal scholarly work indicates that mediation can only be beneficial when Victims have the capacity to identify and claim for their own necessities.<sup>350</sup> Medina et al. recognize three possible outcomes after mediation. The first outcome is when parties agree to go through counselling and provide judges with a certificate of assistance. The second outcome is when parties reject participation in these programmes, and the third is when parties agree to participate in programmes, yet

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<sup>339</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 361.

<sup>340</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*; Poder Ejecutivo de la Nación, *Decreto Reglamentario 235/1996*.

<sup>341</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 5.

<sup>342</sup> *Ibid.*, art 5; Poder Ejecutivo de la Nación, *Decreto Reglamentario 235/1996*, art 11.

<sup>343</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 370.

<sup>344</sup> *Ibid.*, 369–370; and chapter 5 of this study.

<sup>345</sup> Congreso de la Nación Argentina, *Ley 26485*, arts 9(e) and 28; Grillo, “The Mediation Alternative,” 1610; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 172–176.

<sup>346</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 260–262.

<sup>347</sup> Slaikau, *When Push Comes to Shove*, 247–250.

<sup>348</sup> Slaikau, *When Push Comes to Shove*, 250.

<sup>349</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 362–87.

<sup>350</sup> *Ibid.*, 365.

they do not certify to the court their assistance.<sup>351</sup> Legal provisions, however, do not establish any specific penalty when parties do not comply with measures ordered by judges after mediation.<sup>352</sup>

#### 3.4.4.3. City

Private legal representation is considered an important element with which to enforce rights. As mentioned in 3.4.1.3., the City Constitution through article 12(6) states the relevance of having a state that provides pro bono attorneys and *in forma pauperis* to members of society who otherwise will be unable to obtain access.

The City Constitution incorporates a number of provisions aimed at transparency and accountability of the public sector. For this purpose a number of state organizations were created: (i) Auditing Office under the executive and in charge of controlling its functioning;<sup>353</sup> (ii) the General Prosecutor's Office, which determines the legality of administrative acts, protects its patrimony, and represents the City in any process where its rights and interests are under dispute;<sup>354</sup> (iii) the General Audit which controls the public sector in their performance, legality, and economic aspects, and generates public reports with free access to the people, while also verifying the proper designation of public resources for subsidies and contributions;<sup>355</sup> (iv) the ombudsman for the City, defending human rights and individual rights of the people of the City, and with the capacity to present legislative bills and act in legal proceedings;<sup>356</sup> and (v) the Public Service Regulation Body which advocates for the control and quality of the provision of public services in view of the defence of users and consumers.<sup>357</sup>

##### 3.4.4.3.1. Public Prosecutor's Office

Internal regulations incorporate ways to allow Victims to enforce their rights in an informal setting. Therefore, following article 120 CCPC, the City incorporates an informal preliminary stage, where the PPO performs an investigation with the balanced participation of victims (and witnesses). For this purpose, internal regulations allow interviews with victims to be conducted outside of the PPO, such as via telephone, at the address of victims or other locations.<sup>358</sup> The moment of the day when these encounters take place also gains flexibility and breaks with the picture of people moving around fixed state organizations: both now become movable. The goal is to find a balance between the efforts made by both actors, taking into account that

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<sup>351</sup> Ibid., 371.

<sup>352</sup> Ibid., 372–74.

<sup>353</sup> Convención Constituyente, *Constitución de la Ciudad*, art 133.

<sup>354</sup> Ibid., art 134.

<sup>355</sup> Ibid., arts 135–136.

<sup>356</sup> Ibid., art 137.

<sup>357</sup> Ibid., arts 138–139.

<sup>358</sup> Similar reasoning applies to notifications. The internal regulation, following arts 54 and 62 CCPC, states how officers have to deliver notifications. The internal regulation also gives the possibility to officers to notify via telephone, e-mail, or other informal means. This informality is used to improve the communication with parties and their cooperation in the legal procedure, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

victims want to enforce rights and that the PPO has a special interest in the protection of rights in view of the common good.<sup>359</sup> Therefore, the structure and form is not what determines the enforcement of rights, and the parties and state organizations gain relevance.

#### *3.4.4.4. Partial Observations*

The Argentine Constitution states the overarching principle of the right of people to petition the (government) authority and to obtain a response from the authority. The City Constitution incorporates a list of state organizations that can serve to hold authorities accountable for their actions or omissions. Recent legal provisions to enforce the right to access to justice are adjusted to the dynamics of the problem of violence within an environment of trust. Hence, federal legal provisions show a change in paradigm by adopting tailor-made ways of enforcement, together with tools to assist judges in this task. The judicial system enforces legal provisions and judges (together with providers) materialize the enforcement. Therefore, the quality of providers gains relevance in domestic violence cases due to the options available in legal provisions to provide different preventive measures, to work with external programmes, and to offer mediation.

### **3.5. Right to a Remedy**

#### **3.5.1. Enhancement**

This sub-section studies the developments in legal provisions on the right to a remedy. In view of the LE framework, it contemplates legal provisions that aim at improving the understanding and enforcement of rights by incorporating affordable and simple procedural tools. This sub-section focuses on the mechanisms that help people exercise their right to a fair process and to obtain access to justice. The legal procedure is therefore viewed as a tool for people to deal with and resolve their conflicts.

##### *3.5.1.1. Constitutional and International*

People seek access to justice in search of a solution to their problems. Principles on access to justice are therefore closely linked to the right to a remedy. The text of the Argentine Constitution does not expressly mention the right to a remedy, but it mentions the right to due process.<sup>360</sup> The article addressing this right, in line with articles found in other jurisdictions, focuses on the right of the accused to a fair trial.<sup>361</sup> There is no specific article that addresses the right of victims to a fair trial or a remedy, however. This absence is overcome by the incorporation of human rights

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<sup>359</sup> Implementing arts 94 and 120 CCPC, see *ibid*.

<sup>360</sup> Congreso General Constituyente, *Constitución Argentina*, art 18.

<sup>361</sup> Fair trial encompasses the existence of a concrete accusation, specific facts, the possibility for the accused to defend himself, the opportunity to prove facts alleged by parties, and a decision by a competent judge in reasonable time and based on the proven facts and applicable rights, see Cevalco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 15–16.

treaties, which expressly recognize the right of victims to a just and effective remedy provided by a competent judicial system.<sup>362</sup> Victims are therefore granted a right to “restitution, compensation and rehabilitation,”<sup>363</sup> or any other “just and effective remedy.”<sup>364</sup> The right to a remedy, as addressed by human rights treaties, encompasses preventive measures, investigation, trial, and redress<sup>365</sup> with respect to the alleged illicit conduct.<sup>366</sup> The principle of full equality introduced by human rights treaties incorporates the inclusive element of everyone deserving the protection of rights by obtaining an effective and enforceable remedy.

Developments in international instruments recommend states incorporate appropriate mechanisms to tackle the problem subject to remedy (e.g. having specialized and trained providers).<sup>367</sup> One international instrument therefore reads that “... in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large ...”<sup>368</sup> The magnitude and characteristics of problems generating conflicts to be resolved consequently determine the implementation of policies and remedies that need to be considered in association with problems.

Alternative dispute resolution mechanisms are introduced as a way in which to broaden the spectrum of possibilities for parties to achieve conflict resolution through a tailor-made remedy.<sup>369</sup> The Convention of Belém do Pará requires states to establish “fair and effective legal procedures for women who have been subjected to violence which include, amongst others, preventive measures, a timely hearing and effective access to such procedures.”<sup>370</sup> Domestic violence cases require an immediate and temporary remedy and a long-term remedy. The immediate and temporary remedies (e.g. preventive measures, temporary child support) provide Victims with economic and safety resources to cope with the absence of the accused in the family dynamics and to be able to achieve long-term remedies. Current legal provisions across jurisdictions understand that a remedy is achieved when a full repair of the damage is present. The full repair of the damage, in domestic violence cases, exceeds the legal

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<sup>362</sup> Art 17 understands for remedy the “restitution, compensation and rehabilitation,” and establishes that an effective remedy requires prevention, “investigation, trial and redress” on the right that has been violated, see UNGA, *ICC Statute*, see also International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), art 2(3); UNGA, *UDHR*, art 8; UNTS, *Pact of San José*, arts 8 and 25; UNTS, *ICERD*, art 8; UNTS, *Convention of Belém Do Pará*, art 7(b)(g).

<sup>363</sup> UNGA, *ICC Statute*, art 17.

<sup>364</sup> Art 7 recognizes that states have to apply measures in accordance with the characteristics of their societies, and fixed measures would not contribute to obtaining a remedy, UNTS, *Convention of Belém Do Pará*.

<sup>365</sup> *Ibid.*, art 7(b); UNGA, *ICC Statute*, art 17.

<sup>366</sup> UNTS, *Convention of Belém Do Pará*, art 7; UNTS, *Pact of San José*, arts 8 and 25.

<sup>367</sup> General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” paras. 40–42; “Declaración de Brasília”, arts 36–40; UNTS, *Convention of Belém Do Pará*, art 8(h).

<sup>368</sup> UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

<sup>369</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*.

<sup>370</sup> UNTS, *Convention of Belém Do Pará*, art 7(f).



sphere and requires a holistic and multidisciplinary assistance to Victims and family members. It therefore broadens the legal remedies (e.g. child support, divorce, probation, or incarceration) to welfare, economic, and psychological health-oriented remedies.<sup>371</sup>

Legal representation is recognized as a means by which to effectively guarantee the protection of rights and an important element for the right to a judicial remedy.<sup>372</sup> According to international instruments, the legal assistance provided to Victims optimally has to be offered by specialized attorneys.<sup>373</sup> Furthermore, the Inter-American Court of Human Rights interprets articles 8 and 46.2 of the Pact of San José. The Court states that in the cases where domestic provisions require legal representation and the person cannot afford it, the state has a duty to overcome this economic limitation. If the state fails to provide it, individuals can access regional courts without exhausting domestic procedures.<sup>374</sup>

### 3.5.1.2. Federal

The Argentine Criminal Code understands the right to a remedy as the reparation of the damage caused to victims. This reparation of the damage can be given only by a judge when finding the accused guilty of the alleged illicit conduct. Ideally, the remedy should return the situation of the victim to the way it was before the illicit conduct occurred.<sup>375</sup> A monetary compensation may be ruled when this becomes impossible.<sup>376</sup> Furthermore, the Argentine Criminal Code recognizes the right of victims and witnesses to be treated well by state authorities, and to be protected, physically and morally, during the criminal process. This protection is extended to their families.<sup>377</sup> The Argentine Criminal Code contemplates the remedy to be granted by the judicial system. It leaves aside, however, the preventive element present under international law.

Characteristics of problems and types of suitable remedies are directly linked. In conflicts occurring within the family (or with close relations) the remedy sought conveys in the elimination of the conflict, and therefore, in achieving family harmony.<sup>378</sup> The aim, therefore, is not to go through a litigation to find a winner and a loser, but to eliminate conflicts that affect family dynamics. The focus is on Victims

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<sup>371</sup> UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, art 10.

<sup>372</sup> Andreu-Guzmán and Courtis, “Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad,” 54; for a note on the positive relation between obtaining legal representation and the right to a remedy, see Inter-American Court of Human Rights, *Opinión Consultiva OC-11/90*.

<sup>373</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, para. 29.

<sup>374</sup> Inter-American Court of Human Rights, *Opinión Consultiva OC-11/90*, para. 28; Andreu-Guzmán and Courtis, “Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad,” 54.

<sup>375</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 29.

<sup>376</sup> *Ibid.*, art 30.

<sup>377</sup> *Ibid.*, art 79.

<sup>378</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 342.

and their recovery, rather than on punishing the abuser.<sup>379</sup> Law 24417 and Law 26485 recognize this approach to the resolution of conflicts when mentioning the types of remedies that Victims might need in order to recover and move away from violence. The laws recognize the importance of long- and short-term remedies and identify these two approaches aimed at Victims and at society. In this sense, they see remedies in the form of reparation of the damage and of prevention. The remedy is not defined as a static goal, but as a way in which to improve the integral life of parties, especially of Victims. This approach allows for different mechanisms to achieve a remedy and innovative ways can be triggered. Under this discretionary framework the quality of the Legal Organizations and the assistance of providers are highly valued.

Domestic violence cases, as treated by federal laws, can dispose of short- and long-term remedies. Short-term remedies are related to the immediate safety of Victims and to creating an appropriate scenario in which to recover, while long-term remedies contemplate recovery from the violation to all rights experienced by Victims. As such, the reference in Law 26485 to the right of victims of gender violence includes violations of the rights to health, education, personal security, physical, psychological, sexual, economic, and patrimonial integrity, respect of dignity, and decisions made on reproductive life. Furthermore, the law includes the violation of the rights to privacy, freedom of thought, and beliefs.<sup>380</sup> Law 26485 also recognizes the limitations of the judicial system in allowing Victims to achieve a long-term remedy and hence emphasizes the importance of organizations in contemplating the implementation of mechanisms that aim at empowering women to overcome conflicts.<sup>381</sup> Depending on the characteristics of the case, Victims have the right to be guaranteed a holistic remedy (e.g. assistance, safety, and protection).<sup>382</sup>

The executive, through its Ministries,<sup>383</sup> should promote and strengthen the creation of state organizations and NGOs to assist women, using a holistic approach in coordination with every sector that has the chance to deal with the problem.<sup>384</sup> Specialized organizations assisting women, therefore, have to incorporate multidisciplinary assistance and include legal assistance and legal representation, physical and mental health assistance, and welfare assistance. It is also necessary to contemplate financial assistance together with shelters or day centres where Victims can improve their capacity and the capacity to (re)integrate into their family, social, and labour life.<sup>385</sup> Women have a right not to be re-victimized in this commitment to

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<sup>379</sup> Ibid.

<sup>380</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(b)(c)(d)(e)(f).

<sup>381</sup> Ibid., art 7(e); Poder Ejecutivo de la Nación, *Decreto Reglamentario 235/1996*.

<sup>382</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(h).

<sup>383</sup> Ibid., art 11.

<sup>384</sup> Ibid., art 10; the executive order defines the holistic approach as those services in charge of “preventing, detecting, recording, and approaching the different types and ways of violence against women, according to the different communities,” see Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>385</sup> Congreso de la Nación Argentina, *Ley 26485*, art 10(2); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

assist Victims.<sup>386</sup> Re-victimization is related to any unnecessary means used<sup>387</sup> and that may cause detriment to the well-being of Victims. Women have the right to receive from state organizations a timely and effective response to their problems.<sup>388</sup> Timely, meaning a brief and non-delayed resolution, and effective in preventing future abuses and giving back to Victims the possibility to enjoy their rights.<sup>389</sup>

Law 26485 assigns several tasks to the National Council of Women.<sup>390</sup> That council must deal with the implementation of the law, giving the chance to Victims to resolve their disputes and to eliminate discriminatory stereotypes based on gender.<sup>391</sup> For that matter, the law calls for the coordination of actions for compliance between organizations.<sup>392</sup> The National Council of Women must provide permanent training to officials who work with Victims.<sup>393</sup> Furthermore, the Council must promote the creation of multidisciplinary and free assistance, and implement a free telephone line to assist Victims. The Council must also create a Service Guide,<sup>394</sup> with information on the programmes and services available.<sup>395</sup> This Service Guide shows the holistic approach given to the problem, with the inclusion of the telephone number for the police stations, hospitals, courts, and legal, psychological, multidisciplinary, family, and children assistance.

In addition, Law 26485 recognizes the importance of keeping a record of the extension of the problem of gender violence. The law requires the coordination of different organizations and proposes a systematic way for organizations to gather data. It therefore assigns to the State Observatory on Violence against Women<sup>396</sup> the task of analysing and disseminating the data collected, to evaluate and improve the applied policy.<sup>397</sup> The Argentine Supreme Court keeps the registry of the domestic violence complaints and asks judges to forward, annually, socio-demographic information on

<sup>386</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(h).

<sup>387</sup> Art 3(k) reads: “Re-victimization is the subjection of the woman victim, to delays, referrals, unnecessary and irrelevant consultancies; to call her to testify repetitively, answer about precedents or conducts with no relation to the facts and exceeding the exercise of the rights of defense. To have to comply with extremes not contemplated in the law, be object of repetitive, superficial or excessive medical examination, and to be required any practices, procedure, measurement, act or omission involving an inadequate treatment, without distinction of the political, judicial, health, or any other sphere,” see Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>388</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(b).

<sup>389</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 16(b).

<sup>390</sup> The National Council of Women is a council within the National Council of Coordination of Social Policies of the executive, see Consejo Nacional de Coordinación de Políticas Sociales, “Consejo Nacional de las Mujeres.”

<sup>391</sup> For a note on how “gender” is socially constructed on specific cultural characteristics that identify the behaviour of women and men and the relation between them, and citing Simone de Beauvoir’s statement that, “One is not born, but rather becomes, a woman,” see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 13, 36.

<sup>392</sup> Congreso de la Nación Argentina, *Ley 26485*, art 9(b)(c)(i)(j).

<sup>393</sup> *Ibid.*, art 9(h); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>394</sup> “Service Guide.”

<sup>395</sup> Congreso de la Nación Argentina, *Ley 26485*, art 9(d)(g)(ñ)(o).

<sup>396</sup> Arts 12 to 15 mention the creation, functions, and composition of the State Observatory on Violence against Women, see *ibid.*

<sup>397</sup> *Ibid.*, art 9(a)(f)(k)(l)(m)(n).

the cases they hear.<sup>398</sup> This is important for the implementation of preventive measures and mechanisms to tackle the problem of violence against women with effective remedies, because it relies on empirical evidence to design policies.<sup>399</sup>

The Civil and Commercial Code includes the principle of equality by recognizing human diversity,<sup>400</sup> and incorporates general principles for family procedures.<sup>401</sup> These general principles establish the standards for the procedures on family matters and were inspired by the Brasilia Regulation.<sup>402</sup> These ideas were not part of the civil code. Article 706 of the Civil and Commercial Code, being the main provision for that section, reads as follows:

The process in family matters should respect the principles of effective judicial protection, immediacy, good faith and procedural fairness, officiousness, oral proceeding, and limited access [only for parties] to the file.

The rules governing the procedure must be applied to facilitate access to justice, especially for vulnerable groups, and to achieve peaceful resolution of conflicts. Judges before whom these cases must be filed away should be specialized and obtain multidisciplinary support ...

The Civil and Commercial Code recognizes the particularities of family procedures and the need to regulate resulting specificities.<sup>403</sup> Furthermore, it serves as an example of the interplay between private and public law,<sup>404</sup> including vulnerable groups in the text of the seminal private law regulation of Argentina. Lastly, it shifts the view on conflicts between people, placing in the paramount position the characteristics of those facing conflicts.<sup>405</sup> This last is considered a requirement to ensure access to justice for all.

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<sup>398</sup> Ibid., art 37.

<sup>399</sup> In addition, in 2011 the Ministry of Justice and Human Rights of Argentina created a commission in charge of suggesting effective penalties to apply in domestic violence cases, CONSAVIG, “Violencia de género.”

<sup>400</sup> For a note on the reception of the concept of equity in the Civil and Commercial Code, see Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci, “Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación,” 4; Lorenzetti, *Aspectos valorativos y principios preliminares del anteproyecto de Código Civil y Comercial de la Nación*.

<sup>401</sup> This paragraph and the one that follows are borrowed partly and sometimes verbatim from the work of Marotta and Parise, “On Codes, Marriage, and Access to Justice: Recent Developments in the Law of Argentina.”

<sup>402</sup> Medina, “El proceso de familia,” 441; Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci, “Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación,” 97, 98; XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*.

<sup>403</sup> Medina, “El proceso de familia,” 440–49; De la Rúa, “El procedimiento de familia en el Proyecto”; González Da Silva, “Inconstitucionalidad de las disposiciones procesales contenidas en el Proyecto de Código.”

<sup>404</sup> Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci, “Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación,” 4.

<sup>405</sup> Ibid., 4–6.

3.5.1.3. *City*

The City Constitution in article 38 states the need to incorporate specialized units to provide assistance and preventive measures to women victims of physical, psychological, and sexual violence. The article brings the importance of preventive measures to conflict resolution together with the importance of specialized assistance as a requirement to achieve appropriate ways to approach conflicts.<sup>406</sup>

The City Constitution, in line with the Argentine Constitution and human rights treaties, includes article 13 on the right to due process. Article 13 is focused on the protection of the right of the accused to freedom and dignity, ensuring the legality of those acts that limit these rights.<sup>407</sup> The City Constitution also introduces the figure of the City Attorney,<sup>408</sup> with functional autonomy and autarky,<sup>409</sup> though within the judicial system.<sup>410</sup> The City Attorney is composed of the PPO, the City Public Defender, and the City Advisor for Disabled People. The City Attorney functions independently from the legislature and the executive, and hierarchically depends on the judicial system. It is also in charge of the judicial police and ensures a normal service of justice and, when acting before courts, seeks social satisfaction.<sup>411</sup> The City Attorney promotes justice in defence of the legality of the general interests of society, according to the principles of unity of performance and hierarchical dependency. The interest is the protection of objective legality and not only protecting substantive rights. This has to be instructed by the head officers of the City Attorney, without the chance of receiving orders from other branches.<sup>412</sup> The City Attorney ensures the normal delivery of justice and before courts seeks the satisfaction of social interests. Its ultimate goal is social satisfaction, in its capacity as “helper” in the judicial system.<sup>413</sup>

Furthermore, transitional provision twelve of the City Constitution states that the legislature shall create City Courts in each district.<sup>414</sup> These City Courts are meant to hear, amongst other matters, preventive matters in family violence and the protection of people.<sup>415</sup> These courts aim at providing city inhabitants with proximity and accelerated processes in often-encountered disputes. Consequently, City Courts look to a better justice in terms of accessibility and conflict resolution for the

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<sup>406</sup> Convención Constituyente, *Constitución de la Ciudad*, art 38.

<sup>407</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 54–71.

<sup>408</sup> For the structure, composition and integration, performance and competences, and financial and general administration, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley Orgánica del Ministerio Público*.

<sup>409</sup> Convención Constituyente, *Constitución de la Ciudad*, art 124.

<sup>410</sup> *Ibid.*, art 107; Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley Orgánica del Ministerio Público*, art 1.

<sup>411</sup> Convención Constituyente, *Constitución de la Ciudad*, art 125; Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley Orgánica del Ministerio Público*, art 1.

<sup>412</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 354–55.

<sup>413</sup> *Ibid.*, 355–56.

<sup>414</sup> Districts represent the political and administrative decentralization of the territory of the City, see Convención Constituyente, *Constitución de la Ciudad*, art 127; also see Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 359–60.

<sup>415</sup> Convención Constituyente, *Constitución de la Ciudad* cláusula transitoria, décimo segunda, 5.

community.<sup>416</sup> The City Constitution does not establish requirements for the composition of City Courts. Nevertheless, that fundamental text suggests that City Courts be composed of three judges, one of each gender,<sup>417</sup> and offer a place where neighbours can bring their conflicts without legal representation and free of charge. Bills were presented to regulate this matter and already promote a multidisciplinary tribunal with at least one lawyer sitting on the tribunal. Other bills, however, propose a tribunal only of lawyers, and require mandatory legal representation.<sup>418</sup> The matter gained importance in the period 2012-2013,<sup>419</sup> with web pages addressing the issue, seminars being held,<sup>420</sup> and the proposal of bills. There has not yet been a successful bill to establish these tribunals, however.<sup>421</sup>

Legal procedures provide people with tools to resolve conflicts through the intervention of the judicial system.<sup>422</sup> The CCPC incorporates aspects of the adversarial system of justice, understanding the conflict as a real-life problem that a person brings before the judicial system in request of a solution. This departs from the old paradigm which considered the activities of the judicial system as a tool to discover the truth and uphold the law.<sup>423</sup> The goal is, hence, to resolve conflicts and not to discover a truth,<sup>424</sup> and parties gain leadership in the process to resolve their conflicts.<sup>425</sup> The communication between parties is also stimulated and perceived as a way of improving the achievement of conflict resolution. The CCPC states that prosecutors, when requesting evidence, need to do so regardless of whether this might

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<sup>416</sup> For a note on the advantages of introducing City Courts in the City, see Garavano, “Justicia inmediata, barrial o vecinal para la Ciudad de Buenos Aires”; in addition, the constitutional convention addresses the need for a judicial system that includes people without economic resources, providing them with simple ways in which to deal with their conflicts, see Convención Constituyente, “Debates de la Convención Constituyente y Constitución de la Ciudad Autónoma de Buenos Aires.”

<sup>417</sup> Expressly mentioned in the constitutional convention to ensure the participation of women, see Convención Constituyente, “Debates de la Convención Constituyente y Constitución de la Ciudad Autónoma de Buenos Aires.”

<sup>418</sup> e.g. the bills presented by Alicia Bello and Jorge Garayalde (legislators for the City), see Bello, “Nuevo proyecto para crear tribunales de justicia vecinal”; Garayalde, “Proyecto de Ley: Tribunales de Vecindad.”

<sup>419</sup> e.g. Consejo de la Magistratura Ciudad de Buenos Aires, “El Consejo avanza con la justicia vecinal”; Infobae, “Avanza la idea de crear tribunales de la vecindad en la Ciudad.”

<sup>420</sup> e.g. in 2012 a list of seminars about City Courts was announced, see [el mensajero diario.com.ar](http://elmensajero diario.com.ar), “Jornada sobre Justicia de Vecindad de la Ciudad”; in addition, on 31.10.13 a seminar took place on the importance of City Courts in coping with prevention in family violence matters, see Lubertino, “Una mirada de género sobre la justicia vecinal.”

<sup>421</sup> For a more recent article on the implementation of City Courts, see Infojus Noticias, “Se formó la filial porteña de justicia legítima.”

<sup>422</sup> Cevasco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 7, 74.

<sup>423</sup> Ibid., 3–6; Maier, “El ministerio público: un adolescente?” 19–20.

<sup>424</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 421–24; some legal provisions, however, conserve an ultimate goal of “discovering the truth”, such as art 91(1) on the goals of the preliminary investigation stage. This shows how the inquisitorial spirit is still present in the letter of the law. For a historical note on the transition from the inquisitorial system to the accusatory one, see Maier, “El ministerio público: un adolescente?” 20–33.

<sup>425</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 120; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09, 2*.

benefit the accused,<sup>426</sup> and have to make all evidence available to the defence.<sup>427</sup> This to-be-solved problem occurs in a given society and at a specific time, which requires an active role of the victims, and they gain importance in the legal procedure.<sup>428</sup> The contributing role that Victims have to ensure public order by the submission of complaints and evidence is also stressed in legal provisions.<sup>429</sup>

The CCPC includes three main articles on the rights of all victims (and witnesses).<sup>430</sup> These articles use a gender-neutral vocabulary and state that during the process victims are granted the right to be informed of options and results of the process,<sup>431</sup> the right to participate in the process by presenting further information during investigation, and the right to request a review of decisions of prosecutors to file away complaints.<sup>432</sup> Victims have to be informed of their rights with the first summons to appear at the PPO.<sup>433</sup> Hence, Legal Organizations provide Victims with tools to increase participation and appropriation of conflicts. Victims are also granted a right to be treated with dignity and respect by the judicial system<sup>434</sup> and to be physically and morally protected (extending this protection to family members and witnesses).<sup>435</sup>

### 3.5.1.3.1. Public Prosecutor's Office

The PPO incorporates different mechanisms to conflict resolution within its capacity to develop programmes to approach the community. As previously seen, parties gain importance in the search for resolutions of their conflicts, and consequently alternative dispute resolution mechanisms are introduced. The City Attorney, in addition, developed an information technology system to improve the working activities by facilitating fluent communication and a better delivery of assistance. This system changes the way providers perform their daily duties and serves as a way to record information.<sup>436</sup>

An internal regulation recommends how providers can assist Victims (and witnesses) throughout the legal proceedings to resolve conflicts.<sup>437</sup> That regulation derives from principles recognized by international and regional provisions, and from guides and symposiums that recommend ways to improve the rights of Victims to find in the judicial system an institution able to assist in conflict resolution while avoiding

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<sup>426</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 5.

<sup>427</sup> *Ibid.*, art 206; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 120–21.

<sup>428</sup> Cevasco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 23.

<sup>429</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*, 3.

<sup>430</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 37–39.

<sup>431</sup> *Ibid.*, arts 37(d) and 38.

<sup>432</sup> *Ibid.*, arts 38(c)(f) and 199–203.

<sup>433</sup> *Ibid.*, art 39.

<sup>434</sup> *Ibid.*, art 37(a).

<sup>435</sup> *Ibid.*, art 37(c).

<sup>436</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 191/12*.

<sup>437</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

victimization.<sup>438</sup> Furthermore, the internal regulation is in accordance with the missions of the Access General Secretariat that aim at generating channels of communication between the community and the judicial system.<sup>439</sup> These channels of communication are meant to provide information on the legal procedure, and allow for the opinion of victims about the process, minimizing the intrusion in the intimacy and integrity of victims, and granting safety and medical and psychological assistance in view of the right to conflict resolution.

#### *3.5.1.4. Partial Observations*

The right to a remedy in Argentina started to shift the role of the main actors in 1994. With the inclusion of legal provisions people gain relevance in the legal procedure. The type of suitable remedies adjusts to the type of conflicts brought by parties. The focus then starts to deviate from the previous paradigm of finding punishment for the accused to a new paradigm of granting Victims a right to resolve conflicts through suitable remedies. Alternative dispute resolution mechanisms are thereby enhanced because they give parties a higher role over that of providers. The importance of legal representation to resolve conflicts is still considered relevant. However, alternative dispute resolution mechanisms and the City Attorney brought new possibilities for victims to enhance their right to a remedy. The remedy is perceived, within the recent provisions, in a holistic way, considering the ramifications of the conflict within other spheres of the life of Victims. Therefore, coordination amongst state organizations and communication between the judicial system and the parties gain relevance.

### **3.5.2. Awareness**

This sub-section on the awareness of the right to a remedy analyses legal provisions that incorporate mechanisms to inform people of their right to a remedy. It includes those legal provisions that contemplate standards and mechanisms to inform Victims of their claims and allows some level of participation and decision-making. This sub-section also considers campaigns and strategies to improve legal literacy implemented through legal provisions drafted by providers. Furthermore, it contemplates legal provisions that include ways to communicate to Victims how to deal with the legal procedure.

#### *3.5.2.1. Constitutional and International*

International treaties incorporate the principle of the importance of informing victims of their rights and of the mechanisms available to achieve remedies.<sup>440</sup> The Brasilia Regulation brings special emphasis to the importance of introducing a legal procedure understandable for vulnerable groups. The Regulation calls for the substantive and

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<sup>438</sup> e.g. the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Rules of Brasilia on Access to Justice by Vulnerable Individuals, XIV Cumbre Judicial Iberoamericana, Guías de Santiago sobre Protección de Víctimas y Testigos, see *ibid*.

<sup>439</sup> The Access General Secretariat missions are incorporated through Resolución CM 436/07, see *ibid*.

<sup>440</sup> UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.



procedural acts to be communicated effectively to allow the vulnerable an understanding of the occurrences. The paragraphs addressing this matter (also mentioning the right to access to justice) are important here because awareness on the right to conflict resolution, and hence to a remedy, implies awareness and understanding of the process and alternatives towards a solution.<sup>441</sup> The Regulation also addresses the importance of the dissemination of information on the means available to resolve conflicts within the judicial system.<sup>442</sup>

Article 42 of the Argentine Constitution stipulates that state authorities will do what is needed to ensure the education of consumers and users of goods and services. It is then the duty of the state to provide people with suitable education to enable them to make responsible use of their freedom of choice, by having the tools to understand the offers provided by the market and the consequences of the selections made.<sup>443</sup>

### 3.5.2.2. *Federal*

The Argentine Code of Criminal Procedure recognizes the right of victims to be informed of their rights during the process. This information has to be provided at the time victims submit complaints<sup>444</sup> and by the competent officers. Articles 79 through 81 mention the rights of victims (and witnesses). Victims must receive information about their rights in the process, at the time of first appearance in the judicial system, to request information on updates that have occurred in relation to their complaints, and on the situation of the accused. Victims can request the latter information at any time;<sup>445</sup> and they have the right to be informed of the results of every procedural event. The articles enumerate the rights of victims, yet there is no reference to the obligation of the judicial system to respond to those rights. These articles assume that victims will make use of those rights after being informed. There is no contemplation, however, of mechanisms to ensure an effective communication between parties and the judicial system, and of means to instruct the judicial system to ensure awareness of rights.

Law 26485 recognizes the importance of informing Victims of the actions in the process and, thereby, promote their participation in the process,<sup>446</sup> strengthening their role in the search for a resolution of their conflicts. Providers assisting Victims in any stage of the process have the duty to inform them of their rights and how to preserve evidence. In addition, providers have to inform Victims of the options available to resolve conflicts and where and how to obtain assistance.<sup>447</sup> Women have, hence, the right to receive adequate information and assistance. Article 3(g) states that the information provided to Victims needs to be adjusted to their circumstances, in terms

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<sup>441</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, paras. 58–61.

<sup>442</sup> *Ibid.*, paras. 45–46.

<sup>443</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 378.

<sup>444</sup> Congreso de la Nación Argentina, *Código Procesal Penal de la Nación*, art 81.

<sup>445</sup> *Ibid.*, art 80(a)(b).

<sup>446</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(g).

<sup>447</sup> *Ibid.*, art 36.

of language used, clarity, and depth.<sup>448</sup> The law also contemplates mechanisms to promote the options available to Victims in order to resolve their conflicts. For example, article 9 promotes the creation of multidisciplinary and free assistance, the implementation of a free telephone line and a Service Guide<sup>449</sup> with information on the programmes and services available.<sup>450</sup>

Creating social awareness on the rights recognized to women through Law 26485 is directly addressed by article 10. This article recognizes the duty of the state to: guarantee educational campaigns and training to inform the community, create awareness amongst members of the community, and prevent events of violence against women.<sup>451</sup> These educational and training campaigns are to take place in the spheres where women develop their interpersonal relations, and are aimed at eliminating stereotypes and patriarchal uses and clothing accepted in society.<sup>452</sup> Law 26485 helps to perceive how the influence of human rights treaties in federal laws strengthens the burden of the state. The state is therefore considered a key actor in enabling policy change.

### 3.5.2.3. *City*

The CCPC addresses the right of victims to be informed, while the judicial system has the obligation to inform on the existence of this right.<sup>453</sup> Being informed of rights gives victims the chance to control and actively participate; and, therefore, increase their participation in the search for remedies.<sup>454</sup> A precondition for participation is the awareness of the available options, of the updates on the process, and of the chances available to voice themselves when different procedural options are offered. For example, Victims have the right to communicate to prosecutors their desire to continue or extinguish criminal complaints<sup>455</sup> or start civil complaints.<sup>456</sup> Furthermore, Victims have the right to receive notice if prosecutors decide to file away criminal complaints. This notice has to address the right given to Victims to request a review of that decision.<sup>457</sup>

Articles 37(d) and 38 CCPC, on the rights of victims (and witnesses), state the right of victims to be informed of the process and the possibilities they have to participate in

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<sup>448</sup> Ibid., art 3(g).

<sup>449</sup> “Service Guide.”

<sup>450</sup> Congreso de la Nación Argentina, *Ley 26485*, art 9(d)(g)(ñ)(o).

<sup>451</sup> Ibid., art 10(1).

<sup>452</sup> Ibid., art 10(1); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 10(1); Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 179–80.

<sup>453</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 37–39.

<sup>454</sup> Castex, “Notas al primer Código acusatorio porteño,” 13.

<sup>455</sup> Ibid., 10.

<sup>456</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 252–265; Castex, “Notas al primer Código acusatorio porteño,” 16.

<sup>457</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 38(f); see also Cevasco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 143.

the process as a way to raise awareness.<sup>458</sup> This right, however, does not provide concrete strategies to allow victims to make use of this right other than by allocating a duty to providers to inform victims of the updates on the process upon request.<sup>459</sup> Article 39 confirms the importance of informing victims of their rights and states that this information should be provided by the time of the first summons. This is an attempt to ensure that victims, from the very beginning, are aware of their rights and obligations during the process. Consequently, and ideally, this will increase the effective participation of Victims in the process.<sup>460</sup>

Lastly, the City Contravention Code also addresses the right of victims to be informed. Article 41 of that code gives the duty to prosecutors and/or judges to inform victims of the existence of alternative mechanisms available for them in order to resolve conflicts.<sup>461</sup>

### 3.5.2.3.1. Public Prosecutor's Office

Internal regulations mention the importance of informing victims of their rights and the options available to exercise them, enabling the right to a remedy.<sup>462</sup> Consequently, Victims have to be informed of their rights during first interviews with the PPO. The information has to be accessible to Victims and delivered in simple language. Victims have to be informed of: how the act will unfold, what will be the content of that act, and who will participate in that act. The PPO is responsible for the clarification of legal terms and concepts and for informing Victims of the existence of OFAVyT and the holistic assistance they can receive there (legal, psychological, social, and economic).<sup>463</sup> Therefore, the information is related to the rights and to the organizational tools available to exercise their rights, and therefore, to achieve a remedy. Other jurisdictions (e.g. Canada) also provide victims and witnesses with assistance programmes.<sup>464</sup>

### 3.5.2.4. Partial Observations

The legal framework regarding the awareness of the right of victims to a remedy is still in a preliminary stage. Human rights treaties address the importance of informing victims of their substantive and procedural rights in an understandable way so as to allow effective communication. Legal provisions stress the rights of victims to be

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<sup>458</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 307–9.

<sup>459</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 37–38.

<sup>460</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 309.

<sup>461</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 41.

<sup>462</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*, 2.

<sup>463</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

<sup>464</sup> e.g. Ministry of the Attorney General Ontario, “V/WAP” which, compared to OFAVyT, is meant to inform victims and witnesses primarily on their legal procedure, ensuring that victims and witnesses exercise their procedural rights.

informed and the obligation of the judicial system to provide that information. This information has to be delivered by providers when they first meet victims. Awareness of rights is perceived by recent legal provisions, especially Law 26485, CCPC, and internal regulations, as a way to increase the participation of Victims in the process. Few concrete strategies, with the exception of some attempts made by Law 26485 and by internal regulations, have been introduced to raise the awareness of people, and particularly of Victims, of their right to a remedy.

### 3.5.3. Enablement

This sub-section looks at the mechanisms available for people to exercise their right to conflict resolution. It also incorporates the legal provisions that aim at training providers to transmit the message to Victims and hence assist in their capacity to participate in the process. Lastly, it contemplates how legal provisions incorporate programmes to assist Victims to resolve their conflicts and overcome given socio-economic and individual disadvantages.

#### 3.5.3.1. *Constitutional and International*

The Brasilia Regulation recommends the incorporation in the process of forms that can be easily used by vulnerable groups to perform certain actions in the legal procedure.<sup>465</sup> These types of recommendations are important under the LE framework because they recognize the capacity of vulnerable groups to exercise certain procedural acts when they are provided with suitable tools. These tools can overcome the cost of legal representation in situations where good and clear guidance may suffice. The accessibility to these tools, as recommended, should be free and of easy access. The Brasilia Regulation also requires the adaptability of the judicial system, first in developing appropriate tools to be understood by the Victims, and then in ensuring that those tools incorporate all formal procedural elements. A successful implementation of these policies, as reflected comparatively in the attempts of other jurisdictions, calls for communication between the drafters of the forms and providers.<sup>466</sup> Noteworthy, the Brasilia Regulation recommends the inclusion of specialized units, and the delivery of a multidisciplinary action.<sup>467</sup> These two elements are of relevance when searching for conflict resolution in domestic violence cases, due to the particularities of the illicit conduct. Furthermore, the Brasilia Regulation stresses the importance of providers in improving the participation of vulnerable groups when a form of alternative dispute resolution mechanism is chosen.<sup>468</sup>

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<sup>465</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, para. 36.

<sup>466</sup> e.g. the already mentioned cases of Louisiana and California, see Family Court East Baton Rouge, “SelfHelp Desk at the 19th JDC Court House”; California Courts, the Judicial Branch of California, “Online Self-Help Center.”

<sup>467</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, paras. 40–41.

<sup>468</sup> *Ibid.*, para. 47.

Legal representation can be a tool to enable the right to a remedy, subject to the way in which the judicial system is organized. Legal representation is recognized as a means by which to effectively guarantee the protection of the rights of people.<sup>469</sup> Communities are divorcing themselves from the image of “the lawyer” representing “the client” and other resources and mechanisms that are free of charge and of high quality are starting to be implemented.<sup>470</sup> This statement does not aim to diminish the value of legal representation, but to recognize alternatives for representation, which for some particular issues can be replaced by other means that adjust to the needs and constraints of current societies.<sup>471</sup>

The legal assistance provided to Victims should be offered by specialists in the topic and should be tailor-made to the different communities in a jurisdiction. However, new trends tend to realize that this requirement becomes inaccessible or very costly for many, and recognize that there are no pre-given recipes applicable to all circumstances. The international community contemplates particularities of cases before determining the characteristics of the needed legal representation.<sup>472</sup> The Brasilia Regulation already recommended the commitment of the whole legal community, including participation of universities, organizations, and bar associations.<sup>473</sup>

### 3.5.3.2. *Federal*

Law 26485 encourages the National Council of Women to create units throughout Argentina to provide a holistic and free assistance to enable the resolution of conflicts brought by Victims.<sup>474</sup> The units are recommended to address the problem with a strategic design aimed at the empowerment of women, avoiding arrangements that contemplate mediation or negotiation.<sup>475</sup> The UN, similarly, recommends to “explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings.”<sup>476</sup> Law 26485 also stresses the importance of the right of Victims to receive a respectful assistance by providers.<sup>477</sup> This right requires that the three branches of power guarantee the right to confidentiality and privacy, protecting the Victim from being re-victimized as a consequence of seeking help from the state.<sup>478</sup> The type of treatment that Victims receive becomes, in many cases, a decisive

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<sup>469</sup> Andreu-Guzmán and Courtis, “Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad,” rule 28.

<sup>470</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, paras. 29, 31.

<sup>471</sup> Susskind OBE, *The End of Lawyers?*

<sup>472</sup> Inter-American Court of Human Rights, *Opinión Consultiva OC-11/90*, art 28.

<sup>473</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, para. 29.

<sup>474</sup> Congreso de la Nación Argentina, *Ley 26485*, art 9(d).

<sup>475</sup> *Ibid.*, art 9(e).

<sup>476</sup> DAW/DESA United Nations, “Handbook for Legislation on Violence Against Women,” 38.

<sup>477</sup> Congreso de la Nación Argentina, *Ley 26485*, art 3(k); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*, art 3(k); Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 87–92.

<sup>478</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 87–88.

element for them to stay in or give up the process, and is therefore important in the enablement of the right to a remedy.

Law 26485 addresses short-term and long-term remedies for Victims. Article 10 incorporates a set of public policies that the state has to implement to enable these remedies. The policies are related to state organizations, programmes, and campaigns aimed at preventing and fixing the damage resulting from violence. Law 26485 considers, amongst other matters, the following policies: the establishment of specialized state organizations incorporating a holistic approach, the design and incorporation of programmes contributing to the economic and psychological self-reliance of Victims, the availability of shelters, and the delivery of assistance programmes for violent men.<sup>479</sup> Sustainable allocation of economic resources is needed to implement the before-mentioned policies, and Law 26485 calls for an appropriate allocation of monetary resources to make the implementation of these policies feasible.<sup>480</sup> However, Medina et al. argue that the required allocation of resources needed to comply with the precepts of the law have not been assigned.<sup>481</sup>

Legal Organizations in the LE framework become instruments to influence the individual capacity of people to make selections and to externalize their selections in preferred actions and consequences.<sup>482</sup> Legal Organizations can influence the individual capacity by assisting Victims in the self-materialization of procedural requirements (procedural assistance), such as the completion of forms. OVD and OFAVyT are examples of Legal Organizations tailor-made to gender and family violence. OVD was created under the existence of Law 24417 and received significant influence from international principles. Accordingly, worldwide OVD is considered a Legal Organization with an innovative approach to the assistance of gender violence victims.<sup>483</sup> Something similar can be said of the influence of OFAVyT in the equivalents to PPO in Latin America. Both Legal Organizations strongly incorporate a holistic assistance provided by a multidisciplinary team and during extended hours. OVD coordinates its work with civil courts, assisting Victims in obtaining preventive measures within twenty-four hours; while OFAVyT assists Victims during the preliminary investigation stage at the PPO providing Victims with alternative dispute resolution mechanisms. Both Legal Organizations work in cooperation with the network that provides assistance and makes referrals (e.g. for psychological counselling or legal representation) to assist Victims in obtaining a long-term remedy.

### 3.5.3.3. City

The City Attorney can initiate public criminal actions,<sup>484</sup> because of its capacity to represent the state in the criminal process and to defend the general social

<sup>479</sup> Congreso de la Nación Argentina, *Ley 26485*, art 10.

<sup>480</sup> Ibid., art 43; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 285.

<sup>481</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 285, 355, 978–87.

<sup>482</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 20.

<sup>483</sup> OVD - KCS, 001.

<sup>484</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 3.

interest.<sup>485</sup> The preliminary investigation stage, in the hands of the PPO, allows for an initial investigation of conflicts and an assessment of the extent to which a judicial instance can be required.<sup>486</sup> The CCPC enables victims to have the right to “control” the decisions of prosecutors with respect to filing their complaints by granting them the right to request revision of those decisions.<sup>487</sup> Furthermore, Victims have the right to continue with complaints, even when prosecutors decide not to do so. In that case, Victims continue with a private instance.

Witnesses play an important and cooperative role in the search for a remedy. The law gives them the duty to appear when summoned, to inform or declare what they know about the facts, and to tell the truth. Close family members (e.g. spouses, partners, and siblings) can avoid testifying,<sup>488</sup> because the legislator preserves the family cohesion.<sup>489</sup> This historical mechanism to call for the assistance of witnesses to find the “truth” or to move forward on the solution to a conflict represents a key societal contribution and participation in assisting prosecutors to elucidate facts.<sup>490</sup>

There are two tools available to parties and to prosecutors to shape the process in a way that suits parties better to resolve conflicts. On the one hand, prosecutors can suggest and/or agree with parties on alternative dispute resolution mechanisms.<sup>491</sup> On the other hand, the accused can request the postponement of proceedings. In this case, the accused proposes a way by which to repair damage caused to the Victim and other parties, and they have the chance to respond.<sup>492</sup> Both options give the chance to parties to get hold of their conflicts and become active in the suggestion of options to repair damage. The inclusion of these alternatives also relieves courts from cases that can be resolved by parties without their intervention, allowing for the maximization of resources.<sup>493</sup>

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<sup>485</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 108–9.

<sup>486</sup> *Ibid.*, 116–17.

<sup>487</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 252–265; Castex, “Notas al primer Código acusatorio porteño,” 11.

<sup>488</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 123.

<sup>489</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 658.

<sup>490</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 119–128; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 623–72.

<sup>491</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 204; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 878–85.

<sup>492</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 205; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 886–93.

<sup>493</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 888.

The City Contravention Code gives parties the right to conciliate, and by doing so, extinguish the action and penalties.<sup>494</sup> Conciliation or auto-composition of the conflict exists when parties achieve an agreement on how to repair damage or how to resolve conflicts. This can happen at any stage of the process, and prosecutors are given an active role in asking parties for the conditions under which they accept conciliation or auto-composition. Judges have to homologate agreements and these extinguish the contraventions. Judges will not approve agreements when considering that parties were not in an equal standing to discuss matters or if parties felt threatened.<sup>495</sup> Prosecutors can solicit the participation of persons or entities specialized to achieve agreements, or urge parties to appoint a mediator.<sup>496</sup>

*Juntas Comunes* represent the administration at the district level. *Juntas Comunes* are composed of seven members elected by people registered in a specific district and they stay in office for a four-year period.<sup>497</sup> *Juntas Comunes* have no legislative capacity, though they can present bills before the legislature. Their autonomy to implement policies is very limited, and most competences are concurrent to those granted to the City executive. For example, the City Constitution establishes the implementation of a proper method of conflict resolution using alternative dispute resolution mechanisms and multidisciplinary teams, being indeed a competence shared with the City executive.<sup>498</sup> This decentralization aims to improve the participation of the people of the different districts in political matters that directly affect them, because it is under this jurisdiction that people develop many aspects of their lives. The Ministry of Justice and Security for the City is called to assist the executive with every action related to the implementation of communitarian mediation and alternative forms to resolve conflicts in the City.<sup>499</sup> This form of conflict resolution is better delivered by providers and state organizations which are closer culturally and jurisdictionally to the people requesting the assistance.

### 3.5.3.3.1. Public Prosecutor's Office

Internal regulations consider that the participation of victims during the process is important in order to achieve conflict resolution during the preliminary investigation stage and/or to promote or dismiss trial.<sup>500</sup> The informality of the process, suggested by the CCPC and by the internal regulations, also becomes a strategy to maintain the participation of parties. The way in which conflict resolution is approached has been

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<sup>494</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 40.

<sup>495</sup> *Ibid.*, art 41.

<sup>496</sup> *Ibid.*, art 41.

<sup>497</sup> La Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 1777*, arts 19–25.

<sup>498</sup> Convención Constituyente, *Constitución de la Ciudad*, art 128; Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 361–64.

<sup>499</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 4013*, art 18(19); communitarian mediation is free of charge and deals with conflicts between neighbours. For information on how to request and access communitarian mediation, see “Mediación Comunitaria.”

<sup>500</sup> Following art 91 CCPC, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.



challenged by the PPO. The PPO intends, through internal regulations, to eliminate mechanisms used by the judicial system that contribute to a desire on the part of the parties to withdraw from the legal process or that make the experience of the parties negative during the legal process. For instance, the regulations call upon providers to reduce situations of tension and conflict for parties (e.g. avoiding unnecessary contact between parties, reducing intervention, focusing mainly on conflict-related facts presented by parties). Technology is used as a tool to improve communication amongst providers, and between them and the parties. Technology also serves to protect parties from repeating their arguments (e.g. audio-visual tools are incorporated to preserve elements, allowing for further reproduction during the investigation or for presentation as evidence before judges). Internal regulations allocate the technological facilities in one unit located in the City, and parties need to go to that location.<sup>501</sup>

The PPO can request the intervention of the police during the preliminary investigation stage.<sup>502</sup> This is a tool provided by the CCPC to the PPO in order to assist the performance of prosecutors. The City Attorney created the Judicial Investigation Body<sup>503</sup> to assist the PPO in investigating illicit conduct, identifying the alleged actors, and gathering and preserving evidence.<sup>504</sup> The incorporation of mediation in regard to crimes and contraventions demanded extensive discussions and a resolution calling for a mediation protocol.<sup>505</sup> This protocol specifies how and under which conditions mediation will be considered. The elements under consideration are the constitutional rights of due process and defence, and the extent to which mediations will improve the quality of conflict resolution. The quality of providers who perform mediations is also considered necessary for the delivery of mediations that can contribute to conflict resolution.<sup>506</sup>

OFAVyT is designed to assist Victims through the legal procedure towards ensuring conflict resolution. It therefore turns into an innovative form of assisting Victims. It takes intervention upon request from parties, from prosecutors, or when receiving mandates by internal regulations. OFAVyT takes mandatory intervention on domestic violence cases. Furthermore, internal regulations provide additional tools to OFAVyT to assist Victims in overcoming their conflicts and arriving at a remedy.<sup>507</sup> The division has the possibility to implement immediate economic assistance, while in 2009 an on-call service was introduced to function during the hours the units are closed. Even when still not implemented, OFAVyT requested through internal regulations the extension of its activities to include the provision of legal representation and assistance in the completion of forms for Victims. The possibility

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<sup>501</sup> Ibid.

<sup>502</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 95; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 448–50.

<sup>503</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 2896*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “CIJ - Cuerpo de Investigaciones Judiciales.”

<sup>504</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 2896*, art 3.

<sup>505</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 371/09*.

<sup>506</sup> Ibid.

<sup>507</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 382/09*.

to economically assist Victims is only provided under exceptional, urgent, and limited circumstances. The economic assistance intends to cope with the immediate economic needs of Victims after they submit complaints (e.g. housing, food, and medication) and it is only applicable as a final recourse (i.e. when there are no other organizations available to offer assistance).<sup>508</sup> These resources come from the assigned budget of the City Attorney,<sup>509</sup> and they can be executed by the PPO as part of its organizational function to enact internal regulations for the effective and efficient performance of missions and tasks. Prosecutors need to formally request economic assistance that is subject to availability.<sup>510</sup>

Internal regulations specifically address vulnerable groups. Provisions use categories appearing in the Brasilia Regulation. Therefore, women, migrants, and children, amongst other groups, are considered vulnerable. Consequently, internal regulations introduce Gesell domes when interviewing parties under the age of eighteen.<sup>511</sup> Processes involving children are held in cooperation with the Council for the Rights of Children and Adolescents<sup>512</sup> and the Legal Counsel to Advise in Children's Matters.<sup>513</sup> The internal regulations state the necessity to introduce translators when parties do not know the language to be spoken before the PPO and when they need to be informed of their rights.<sup>514</sup> Emphasis is given on the communication tools to immigrants.

#### 3.5.3.4. *Partial Observations*

The idea of returning the conflict to the parties as a way to improve the consequences of accessing to the judicial system is not new in the criminology literature.<sup>515</sup> Criminal cases, however, deal with conflicts that include “one of the parties and the state,” and not solely parties.<sup>516</sup> Incorporation of legal provisions, especially represented by PPO, gives a chance to victims to get hold of their conflicts, without leaving it exclusively in the hands of the state and/or lawyers. Protecting victims and allowing their participation in the process has therefore become more present in legal provisions (e.g. Law 24417, Law 26485, CPCC, and internal regulations). The situation of different groups, in terms of vulnerability to conflict resolution, is also starting to gain relevance. Hence, a tendency to adjust the legal procedure to the vulnerabilities of

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<sup>508</sup> Ibid.

<sup>509</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley Orgánica del Ministerio Público*, art 21.

<sup>510</sup> The economic resources available to OFAVyT to assist victims comes from the “caja chica,” which is an amount of money allocated to this purpose, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 382/09*.

<sup>511</sup> For the criteria used to implement Gesell domes to interview children, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 58/10*.

<sup>512</sup> Buenos Aires Ciudad, “Consejo de los Derechos de Niñas, Niños y Adolescentes.”

<sup>513</sup> Ministerio Público Tutelar, Poder Judicial CABA, “Asesoría General Tutelar Adjunta de Menores.”

<sup>514</sup> Special attention is given to the cooperation with consular offices of the country of the immigrants. This becomes another sign of the importance given to countries, in today's societies, to watch over the rights of their citizens, see Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

<sup>515</sup> e.g. Christie, “Conflicts as Property.”

<sup>516</sup> Ibid., 3.

Victims (e.g. vulnerability based on gender) is sensed as important to enable their right to a remedy. Elements with no legal relevance are starting to play an increasing role within the legal procedure because they are considered necessary to remedy the existing harm.

### 3.5.4. Enforcement

This sub-section on the enforcement of the right to a remedy studies the legal provisions that assist Victims in executing their right to a remedy. Therefore, it contemplates the different paths available for Victims to arrive at a remedy. Those paths are viewed in terms of cost and simplicity together with the use of alternative dispute resolution mechanisms. Lastly, this sub-section considers legal provisions designed for the administration of justice and how these provisions address the right to a remedy.

#### 3.5.4.1. *Constitutional and International*

The right of victims to obtain a remedy through the judicial system demands appropriate enforcement to restore “dignity, the reputation and the rights of the victim and of persons closely connected with the victim.”<sup>517</sup> Argentina, under the Pact of San José, is responsible for implementing measures to enforce the remedies granted by the judicial system,<sup>518</sup> as a way to protect the rights that have been violated.<sup>519</sup> The Convention of Belém do Pará, specifically addressing violence against women, makes clear that states are responsible for undertaking means to “prevent, punish and eradicate” all forms of violence against women.<sup>520</sup> Under this obligation states assume the responsibility to introduce mechanisms to enforce the right of victims to receive a remedy for the violence perpetrated against them.

Furthermore, human rights treaties grant the right to every person to obtain a prompt decision after they exercise the right to submit a complaint.<sup>521</sup> The Pact of San José, for example, provides mechanisms for individuals and NGOs to approach the Inter-American Commission on Human Rights when there is a violation of the treaties after the other instances have been exhausted.<sup>522</sup> There is, however, an exception to this requirement that occurs when parties are deprived by the domestic judicial system of the right to access to a remedy.<sup>523</sup> Procedural legal provisions incorporate mechanisms for an agile judicial system. The Brasilia Regulation emphasizes the need for a “prompt judicial resolution, as well as the fast execution of the resolution”<sup>524</sup> when a

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<sup>517</sup> UNGA, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, para. 22.

<sup>518</sup> UNTS, *Pact of San José*, art 25(2).

<sup>519</sup> General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas,” footnote 33.

<sup>520</sup> *Convention of Belém Do Pará*, art 7(a).

<sup>521</sup> OEA, *Am. Decl.*, art 24; UNTS, *Pact of San José*, art 46(2).

<sup>522</sup> UNTS, *Pact of San José*, arts 44–46.

<sup>523</sup> *Ibid.*, art 46.

<sup>524</sup> XIV Ibero-American Judicial Summit, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, para. 38.

case involves vulnerable people. The importance of a prompt judicial resolution becomes more relevant in domestic violence cases. Abuse, isolation, and dependency, considered as some of the characteristics of abusive relationships, increase the vulnerability of Victims in finding a resolution of their conflicts because those elements remain unchanged even when the legal procedure begins. Alternative dispute resolution mechanisms, after considering the vulnerabilities of parties, are to be carefully considered when seeking a resolution of conflicts.<sup>525</sup>

A responsive action from the state, materialized in a proper investigation, relates to the right of the Victim to a remedy. Furthermore, a responsive action from the state extends to the right of the entire society<sup>526</sup> to a remedy, because the proper participation of the judicial system becomes “evidence of willingness by the state, as the representative of society, to take effective action to sanction such acts.”<sup>527</sup> The active and proper state intervention also serves preventive purposes.<sup>528</sup> The quality of providers, in terms of transparency and adequate training, and the functioning of the judicial system, in terms of fairness and impartiality, are important and necessary elements in order to give victims a fair chance to enforce their right to a remedy.<sup>529</sup>

In 1994 the Argentine Constitution introduced the Attorney General’s Office, the Council of Magistrates of the Nation, and the Prosecution Tribunal to deal with the quality of providers and the functioning of the judicial system.<sup>530</sup> The Attorney General’s Office has functional autonomy and economic autarky<sup>531</sup> to exercise its role to promote legality and the general interest of society.<sup>532</sup> It has two components, one designed to assist those who perceive that their rights have been violated (i.e. PPO);<sup>533</sup> and another designed to assist those who have been accused of a crime (i.e. Public Defender).<sup>534</sup> This entity, under the principle of legality, has the power to publicize crimes of public action after taking notice of the illicit conduct.<sup>535</sup> The Council of Magistrates of the Nation and the Prosecution Tribunal were created as a way by

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<sup>525</sup> Ibid., paras. 43–44.

<sup>526</sup> UNTS, *Convention of Belém Do Pará*, art 7(e).

<sup>527</sup> Maria da Penha Fernandes v. Brazil, 54/2001 IACHR, 56 (OEA/Ser.L/V/II.111 2001); for a comment on the court decision and on the discriminatory action of the state by tolerating violent acts against women, see Medina, “El valor de las decisiones judiciales para evitar la violencia contra la mujer. Jurisprudencia de la Corte Interamericana de Derechos Humanos y Argentina sobre Derechos Humanos de las Mujeres.”

<sup>528</sup> Comas de Argemir, “Violencia de género: Normativa internacional para combatirla y propuestas legales en España,” 279.

<sup>529</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 15–23.

<sup>530</sup> Congreso General Constituyente, *Constitución Argentina*, art 120.

<sup>531</sup> For a reference to the constitutional convention on where to place the Attorney General’s Office within the tripartite structure of power, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 841–42; Congreso de la Nación Argentina, *Ley Orgánica del Ministerio Público*, art 1.

<sup>532</sup> For a list of the attributions given by law to the Attorney General’s Office, see Congreso de la Nación Argentina, *Ley Orgánica del Ministerio Público*, art 25.

<sup>533</sup> Ibid., arts 33–50.

<sup>534</sup> Ibid., arts 52–64.

<sup>535</sup> Ibid., arts 29 and 40.

which to gain more transparency in the selection and removal of magistrates.<sup>536</sup> The Council of Magistrates of the Nation has the power to issue orders dealing with the judicial system and the effective delivery of assistance.<sup>537</sup> Both agencies are consulted by the House of Deputies when drafting bills related to the design of the judicial system (creation and physical location).<sup>538</sup>

Sanctions on public officials who commit illicit enrichment were also incorporated in the text of the Argentine Constitution in order to further protect democracy. Congress was called upon to enact a law on public ethics to rule over the actions of public officers;<sup>539</sup> and, therefore, in 1999, Law 25188 on ethics of state employees was enacted.<sup>540</sup> This law states the ways in which public officials have to exercise their functions ethically. Any person can hold a state employee accountable for violating their ethical public functions by submitting a complaint to the National Commission of Public Ethics that was created to this effect.<sup>541</sup> In addition, the Anticorruption Office was created by law in 1999<sup>542</sup> to coordinate and elaborate public policies against corruption in the public sector. Similar functions are granted to the National Attorney for Administrative Investigations and the Attorney General's Office. However, the first office responds to the Ministry of Justice while the second and third respond to the Public Ministry.<sup>543</sup> A recent case study evaluating the performance of the Anticorruption Office found that legal autonomy, coordination with other state organizations, and political independency, amongst other factors, may contribute to better performance.<sup>544</sup>

### 3.5.4.2. *Federal*

Laws 24417 and 26485 include a variety of options available for Victims to enforce their right to remedy. Victims can obtain preventive measures such as restraining orders that prohibit the accused from coming close to the places where Victims go about their daily lives; and judges can order preventive measures to protect Victims, such as having a policeman at the door of their house or a police car patrolling the area.<sup>545</sup> Furthermore, the accused can be prohibited from purchasing and possessing

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<sup>536</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 436, 776–803.

<sup>537</sup> Congreso General Constituyente, *Constitución Argentina*, art 114(6).

<sup>538</sup> Ibid., art 75(20); Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 585; moreover, some scholars criticize the introduction of the Council of Magistrates of the Nation because they consider it as lacking the capacity to understand the needs and dynamics of the judicial system, see Farias, “Nuestro Diagnóstico Sobre El Consejo de La Magistratura.”

<sup>539</sup> Congreso General Constituyente, *Constitución Argentina*, art 36(3)(4).

<sup>540</sup> Congreso de la Nación Argentina, *Ley de Ética de la Función Pública*.

<sup>541</sup> Ibid., art 25.

<sup>542</sup> Congreso de la Nación Argentina, *Modificación. Créase la oficina anticorrupción en el ámbito del Ministerio de Justicia y Derechos Humanos*, art 13.

<sup>543</sup> For an analysis on the duplication of functions, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 320–21.

<sup>544</sup> Cingolani, “Bureaucracies for Development: Oxymoron or Reality? Studies on State Capacity in Challenging Governance Contexts,” 149–74.

<sup>545</sup> Congreso de la Nación Argentina, *Ley 26485*, art 26(a.1)(a.6).

weapons;<sup>546</sup> and judges can order the accused to stop performing violent acts against Victims and order the restitution of personal goods.<sup>547</sup> Moreover, and to protect the assets of Victims, judges can temporarily prohibit the accused from freely disposing of community property and can request an inventory of community and personal property.<sup>548</sup> To protect the stability of Victims and their capacity to recover, judges can provisionally exclude the accused from the family residence, regardless of ownership, and allow Victims to temporarily stay in the property.<sup>549</sup> Temporary child support<sup>550</sup> and temporary suspension of visitation can be set if there are children involved.<sup>551</sup>

The singularity of each family calls for singularity in the selection of measures of enforcement.<sup>552</sup> Personnel highly specialized in the conflict of violence within the family are therefore significant. Law 26485 recognizes the importance of the active role of Victims in the process, and consequently incorporates their right to be heard by the competent judicial authorities and to have their will considered when decisions on the case are made.<sup>553</sup> The participation of Victims in the process is protected by granting them (i) the right to intimacy, ensuring the anonymity of their judicial actions;<sup>554</sup> (ii) the right to refuse an examination of their bodies, when it does not derive from a court order;<sup>555</sup> and (iii) the right to have available mechanisms to submit complaints against officials when they do not comply with judicial deadlines and when there is excessive bureaucracy in access and in the proceeding itself.<sup>556</sup> Law 26485, following the reasoning of the Brasilia Regulation, reinforces the right of women to receive immediate and preventive measures when any of their rights are threatened.<sup>557</sup>

Evidence is treated differently by Law 26485. Victims have the right to submit evidence and to have that evidence considered broadly, because that law recognizes the difficulties Victims encounter in gathering evidence due to the form and environment where events occur.<sup>558</sup> The primary witness, many times, is the abuser, and the evidence is reduced to the statement of Victims. The collection of evidence has to comply with the right to due process stated in article 18 of the Argentine Constitution. This article states that the written correspondence must be inviolable, and that “a law shall determine in which cases and for what reasons their [i.e. correspondence] search and occupation shall be allowed.” The Argentine Code of Criminal Procedure states, in article 236, that telephone taping can be ordered by

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<sup>546</sup> Ibid., art 26(a.4).

<sup>547</sup> Ibid., art 26(a.2)(a.3).

<sup>548</sup> Ibid., art 26(b.1)(b.9).

<sup>549</sup> Ibid., art 26(b.2)(b.3).

<sup>550</sup> Ibid., art 26(b.5).

<sup>551</sup> Ibid., art 26(b.7)(b.8).

<sup>552</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 355.

<sup>553</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(c)(d).

<sup>554</sup> Ibid., art 16(f).

<sup>555</sup> Ibid., art 16(j).

<sup>556</sup> Ibid., art 16(k); Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>557</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(e).

<sup>558</sup> Ibid., art 16(i).

judges only through well-founded decisions.<sup>559</sup> Victims have, however, a right to appeal and to move the case forward, even when the Attorney General decides not to appeal.<sup>560</sup>

Judges can grant preventive measures<sup>561</sup> when they become aware of violent facts. These measures enforce certain actions (or inactions) of parties in conflicts at the beginning of the legal procedure.<sup>562</sup> Preventive measures aim to protect Victims and allow a proper scenario to proceed with investigations and to reach resolutions of conflicts in the long term.<sup>563</sup> Judges, therefore, can request a multidisciplinary report from specialized organizations to assess damage (e.g. physical, physiological, and economic damage) to enforce the right to a remedy. These reports have to be granted within forty-eight hours and will assist judges when considering whether to continue with already applied measures, modify these, or take new measures.<sup>564</sup> Judges are also required to take an active role with full capacity to steer the process, request evidence to help demonstrate facts, and modify measures ordered against parties who do not comply.<sup>565</sup>

Legal provisions incorporate penalties for parties who do not comply with preventive measures. Judges may “impose pecuniary penalties on persons that fail to perform legal duties” in the civil sphere;<sup>566</sup> while in the criminal sphere, this behaviour can fall under the crime of disobedience to the authority, which can be punished with fifteen days to one year of detention.<sup>567</sup>

The opinion of Victims is to be considered, since the judicial system makes a decision that might have effects.<sup>568</sup> This clause helps to increase the participation of Victims in the process, and to provide Victims an active role, closely related to the right to be heard and the right to participate in the process.<sup>569</sup>

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<sup>559</sup> Congreso de la Nación Argentina, *Código Procesal Penal de la Nación*, art 236; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 177.

<sup>560</sup> Congreso General Constituyente, *Constitución Argentina*, arts 18 and 120; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 181.

<sup>561</sup> Art 4 provides a list of measures available to judges and art 26 focuses on the measures judges can consider for cases of violence against women, see Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*; for a note on arts 4 and 26, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 342–62.

<sup>562</sup> Congreso de la Nación Argentina, *Protección contra la Violencia Doméstica*, art 4; Congreso de la Nación Argentina, *Ley 26485*, art 26.

<sup>563</sup> Medina et al. argue that the length of the preventive measures needs to be in accordance with the legal obligation of the state to protect Victims during legal proceedings, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 346–48.

<sup>564</sup> Congreso de la Nación Argentina, *Ley 26485*, art 29; Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*.

<sup>565</sup> Congreso de la Nación Argentina, *Ley 26485*, arts 30–32.

<sup>566</sup> Congreso de la Nación Argentina, *Código Civil Argentino*, art 666bis; Trans. Románach, Jr., *Civil Code of Argentina*.

<sup>567</sup> Congreso de la Nación Argentina, *Código Penal de la Nación* art 239; Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 359–62.

<sup>568</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(d).

<sup>569</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 200–202.

### 3.5.4.3. City

The enforcement of the right to a remedy for victims has changed within the City. The resolution of conflicts gains relevance, while the enforcement of penalties experiences a setback. The inclusion of the adversarial aspect to the CCPC draws a clear line between the accusatory functions of prosecutors, with the capacity to collect evidence, and the impartial decisions of judges, which are based on accusations made by prosecutors in which judges do not participate.<sup>570</sup> The burden of proof remains exclusively on the accuser, following the legal principle stating that everyone is innocent unless it is shown otherwise.<sup>571</sup> When prosecutors receive criminal complaints they can, depending on the characteristics of the case, order the filing of the complaint, request the lack of jurisdiction and refer the complaint to the court able to hear the case,<sup>572</sup> or start with the preliminary investigation stage.<sup>573</sup>

The resolution of conflicts, and not the application of penalties, is the ultimate goal of the process according to the spirit of the CCPC.<sup>574</sup> After the preliminary investigation stage is finished, and if parties do not arrive at a resolution, parties might go to trial, and prosecutors provide the evidence for the debate. The accused is notified of the complaint and is given the chance to present evidence. Further on, a hearing is held to decide whether the evidence is to be admitted, and then parties are called to a public and oral trial. It should be noted that only the evidence accepted will be considered during trial. In addition, parties are obliged to appear before the judge. Judges will, ultimately, rule based on the pleading and the evidence, and those rulings can be appealed.<sup>575</sup> Prosecutors are representatives of the state and the social interest during the preliminary investigation stage; while parties are the representatives of conflicts. This informal setting focuses on the possibilities that parties have to find a resolution of the conflict using alternative dispute resolution mechanisms. These mechanisms are used because they have shown to be effective in approaching parties that are in conflict.<sup>576</sup> Prosecutors must promote actions during the preliminary investigation stage, and eventually promote the accusation.<sup>577</sup>

The preliminary investigation stage, therefore, gains relevance by the inclusion of the adversarial system. Prosecutors work on discovering the existence of the typified act by collecting elements that will assist to discern, and will become part of, the evidence

<sup>570</sup> Fuente, “Presentación,” 11–15; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 118–19.

<sup>571</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 5 and 168; Fuente, “Presentación,” 12.

<sup>572</sup> Art 7 states that prosecutors, at any phase of the legal procedure, can put forward a request to the tribunal of their lack of geographical or substantive jurisdiction, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 134–36.

<sup>573</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 85.

<sup>574</sup> Castex, “Notas al primer Código acusatorio porteño,” 16.

<sup>575</sup> *Ibid.*, 14–15.

<sup>576</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 420–31.

<sup>577</sup> *Ibid.*, 425.



in trial.<sup>578</sup> In addition, prosecutors establish the circumstances that typify those acts and recognize those who participated in the acts.<sup>579</sup> Furthermore, prosecutors provide options to resolve conflicts using alternative dispute resolution mechanisms,<sup>580</sup> such as mediation.<sup>581</sup> The preliminary investigation stage is informal, unless for the elements that are important for the investigation and that are at risk of being lost or altered with time.<sup>582</sup>

The preliminary investigation stage becomes a preliminary part of the process. If no conflict resolution is achieved within the limited time frame established by law<sup>583</sup> and if legal requirements are met, the preliminary investigation stage ends in a trial.<sup>584</sup> Being preliminary, the aim of that investigation is to be expedited by providing the necessary elements to prosecutors to decide on the steps to follow.<sup>585</sup> Parties have a right to exercise influence over and participate in this stage of the process. The accused is informed of criminal complaints once prosecutors determine the existence of the alleged facts.<sup>586</sup> Judges here have no intervention, yet with some exceptions.<sup>587</sup> Prosecutors may request filing of criminal complaints<sup>588</sup> or referral to trial<sup>589</sup> once the preliminary investigation stage concludes.

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<sup>578</sup> For a note on the limitations of elements gathered at the preliminary investigation stage that cannot be included as evidence, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 91(3); Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 428–29.

<sup>579</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 91(1)(2)(3).

<sup>580</sup> *Ibid.*, arts 91 and 204; Castex, “Notas al primer Código acusatorio porteño,” 13–16.

<sup>581</sup> Law 26485 does not recommend mediation in domestic violence cases, see Congreso de la Nación Argentina, *Ley 26485*, art 8. Supporters of this argument state that it is impossible to mediate in relationships with unequal power.

<sup>582</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 94; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 442–43.

<sup>583</sup> Art 104 establishes that the preliminary investigation stage cannot last more than 3 months from the time the accused is served. The article contemplates exceptions where prosecutors can request an extension of the period, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*.

<sup>584</sup> This approach given by the CCPC to the evidence is challenged by the defence party who request access to cases and the incorporation of mandatory notifications of certain acts, see Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 445–48.

<sup>585</sup> *Ibid.*, 439–40.

<sup>586</sup> Castex, “Notas al primer Código acusatorio porteño,” 13.

<sup>587</sup> Judges intervene in requires of: coercive measures (art 174), potential detention or deprivation of freedoms (arts 172 and 173), entry to the dwelling of the accused (art 108), inspection or confiscation (art 112), interception of communications or mails (arts 115 and 117), review of jurisdiction of prosecutors (art 17), annulments (art 73), and exceptions (art 197), see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*; Fuente, “Presentación,” 13; Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 114–15.

<sup>588</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, arts 199–203.

<sup>589</sup> *Ibid.*, arts 209–212.

Parties go to trial if the preliminary investigation stage was unable to trigger a solution for all parties and a remedy for victims.<sup>590</sup> Prosecutors provide judges with a clear description of the facts (typified) and an argumentation on why a case was referred to trial when the preliminary investigation stage fails.

The City Constitution, as the Argentine Constitution, incorporates provisions to increase the fairness and impartiality of judges and prosecutors when applying the law. The City Council of Magistrates now<sup>591</sup> functions within the judicial system, with the capacity to select and propose judges and members of the City Attorney. The City Council of Magistrates has the capacity to draft internal regulations, design and administer the budget, and receive complaints against magistrates and members of the City Attorney. This organ is involved in the process of appointment, accusation, and removal of judges or members of the City Attorney in order to improve transparency.<sup>592</sup>

#### 3.5.4.3.1. Public Prosecutor's Office

The PPO has a two-sided interest in resolving a conflict under its jurisdiction: the rights of people and the social interest. Alternative dispute resolution mechanisms are introduced by internal regulations as a way by which to improve the conditions of the system that Victims access to resolve their conflicts.<sup>593</sup> Furthermore, use of alternative dispute resolution mechanisms is recommended and requested, whenever possible, to improve the participation of parties in the search for a resolution of conflicts.<sup>594</sup>

#### 3.5.4.4. *Partial Observations*

Parties increased their participation in the process, yet the judicial system steers the process and the enforcement. The increased trust given to parties as entities able to resolve their conflicts and find suitable remedies can be perceived as one of the main incorporations in legal provisions related to the enforcement of the right to a remedy. Human rights treaties stress the responsibility of the state to respond efficiently to the conflicts that occur amongst parties. The quality of the response serves an individual and a social purpose. The individual purpose is that parties find in the judicial system a body able to assist in the search for a remedy and for a resolution of conflicts. The social purpose serves a preventive role. The quality of the service granted by providers is also addressed in terms of transparency and accountability by the Argentine Constitution and City Constitution by the incorporation of different entities. Law 24417 and Law 26485 address procedural matters, incorporating tailor-made remedies having at the centre the characteristic of the conflict taking place in the family (or close relations). The CCPC offers parties more chances to communicate and jointly

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<sup>590</sup> Ibid., art 206.

<sup>591</sup> Convención Constituyente, *Constitución de la Ciudad*, arts 115–117.

<sup>592</sup> Ibid., art 116.

<sup>593</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 31/09*.

<sup>594</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 66/07* in line with art 41 City Contravention Code and art 94(4) CCPC.

agree upon a remedy for their conflicts.<sup>595</sup> Alternative dispute resolution mechanisms are techniques currently used to that effect, and the preliminary investigation stage gains relevance in the search for a resolution of conflicts.<sup>596</sup>

## 3.6. Right to Democratic Participation

### 3.6.1. Enhancement

This sub-section, on the enhancement of the right to democratic participation, studies the advancements in legal provisions towards this right. The enhancement of the right to democratic participation contemplates how the legal framework has developed to guarantee representation of vulnerable groups (e.g. Victims) in the different policy-making forums. This right is important under the LE framework because the Victims who gain LE will tend to participate in the policy process.<sup>597</sup> Therefore, democratic participation is considered an outcome of LE.

#### 3.6.1.1. Constitutional and International

The Argentine Constitution introduced the word “democracy” in its 1957 text, when incorporating the right of employees to unionize freely and democratically.<sup>598</sup> Article 36 states since 1994 that the “democratic system” shall prevail over *de facto* governments and illicit enrichments.<sup>599</sup> Political parties are also incorporated in the Argentine Constitution as key institutions to ensure the democratic system. The Constitution requires political parties to be organized and to function democratically.<sup>600</sup> Moreover, Congress has the capacity to “enact laws referring to the organization and basis of education ... which ensure ... the fostering of democratic values and equal opportunities and possibilities with no discrimination whatsoever”;<sup>601</sup> and to approve treaties on integration only if these respect the democratic order.<sup>602</sup>

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<sup>595</sup> Rizzi, La Rosa, and Donna, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires. Comentado, anotado y concordado*, 878–85.

<sup>596</sup> Cevasco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 7, 17.

<sup>597</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 12.

<sup>598</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16–17 for a comment by art 14bis on the right of employees to, amongst other rights, freely and democratically become part of a labour union, see 122.

<sup>599</sup> Congreso General Constituyente, *Constitución Argentina*, art 36; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16, 316–21; Argentina experienced a cyclical history of *de facto* regimes and constitutional governments. National and international organizations were “born” as watchers over governmental events, aiming at generating awareness of the responsibility of people in forming a democratic country, see Dockery, “The Rule of Law over the Law of Rulers: The Treatment of *de Facto* Laws in Argentina,” 1596–1604.

<sup>600</sup> Congreso General Constituyente, *Constitución Argentina*, art 38; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16, 331–55.

<sup>601</sup> Congreso General Constituyente, *Constitución Argentina*, art 75(19); Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16, 578–88.

<sup>602</sup> Congreso General Constituyente, *Constitución Argentina*, art 75(24); Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16, 599–602.

Argentina adopts a representative form of government,<sup>603</sup> and “people neither deliberate nor govern except through their representatives and authorities established by [the] Constitution.”<sup>604</sup> People can participate in political acts by exercising their right to vote, their right to constitute or be part of a political party, and their right to assemble and to demonstrate.<sup>605</sup> Equal opportunity for men and women<sup>606</sup> shall be granted to access to elective and political party candidacies.<sup>607</sup> Affirmative actions are recognized by the Argentine Constitution as a way to grant equal opportunity.<sup>608</sup>

The right to vote, which is universal, equal, secret, and mandatory,<sup>609</sup> provides every citizen the capacity (and obligation, since voting is mandatory) to elect their representatives and to exercise their political rights. Political parties are considered means to guarantee democratic participation because they are connectors between the people and power.<sup>610</sup> They are meant to represent the political will of a diverse society, and their right of free creation and activities is only limited by the Argentine Constitution.<sup>611</sup> The Argentine Electoral Code, sanctioned in 1983, designs the electoral system (for the selection of members of the executive and the legislature) following proportional representation.<sup>612</sup>

The 1994 Argentine Constitution introduces semi-direct democratic participation<sup>613</sup> and popular consultation besides the right to vote.<sup>614</sup> These forms strengthen the communication between the representatives and the people, giving the latter another constitutional tool to participate in the public policy process. The first form provides the people with the chance to communicate with representatives, while the second form gives representatives the chance to communicate with the people. Semi-direct participation gives citizens the possibility to present bills to Congress in any matter except for those related to constitutional reform, international treaties, taxation, budget, and criminal issues. Congress has the duty to consider bills within twelve months.<sup>615</sup> Popular consultation can be done at the initiative of Congress, and bills become laws if they receive the affirmative vote of the people. In addition, Congress

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<sup>603</sup> Congreso General Constituyente, *Constitución Argentina*, art 1.

<sup>604</sup> *Ibid.*, art 22.

<sup>605</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 322.

<sup>606</sup> Women gained political rights in 1947 with the enactment of Law 13010, see Congreso de la Nación Argentina, *Derechos políticos de la mujer*.

<sup>607</sup> Congreso General Constituyente, *Constitución Argentina*, art 37.

<sup>608</sup> *Ibid.*, art 37; for a note on the positive and negative aspects of the acceptance of affirmative actions at a constitutional level, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 330 and footnote 956.

<sup>609</sup> On the political rights of citizens, see Congreso General Constituyente, *Constitución Argentina*, art 37.

<sup>610</sup> *Ibid.*, art 38; Law 23298, sanctioned in 1985 (before the introduction of art 38 of the Argentine Constitution in 1994), presents the general principles, requirements, and conditions for the creation of political parties, see Congreso de la Nación Argentina, *Ley Orgánica de los Partidos Políticos*; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 331–55.

<sup>611</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 321–31, 334–36, 351–55.

<sup>612</sup> The form of electoral system is known as “D’Hont.” The system assigns candidates based on the number of votes each list receives, see Poder Ejecutivo Nacional, *Código Electoral Nacional* title VII.

<sup>613</sup> Congreso General Constituyente, *Constitución Argentina*, art 39.

<sup>614</sup> *Ibid.*, art 40.

<sup>615</sup> *Ibid.*, art 39.

or the Argentine President can present non-binding bills for popular consultation.<sup>616</sup> These legal provisions provide people with chances to have democratic participation by accessing the legislature with policy suggestions.

Channels to social participation are relevant as a means by which to voice needs and consequently increase the quality and effectiveness of policies. The American Declaration of the Rights and Duties of Man (Am. Decl.) reaffirms the right of the people, with legal capacity, to participate in the policy process of their states. The communication with the government is recognized in the Am. Decl. as being direct or through their representatives, and hence, free and transparent elections are considered to play a key role.<sup>617</sup>

### 3.6.1.2. *Federal*

Women in Argentina had active democratic participation during and after the last military regime that ended in 1983.<sup>618</sup> Measures to accelerate the achievement of equality between men and women in their democratic participation were also introduced at the federal level.<sup>619</sup> For example, in 1991, Law 24012 was introduced requiring that lists of candidates include a 30 per cent representation of women.<sup>620</sup> This law is in line with the Argentine Constitution's requiring "actual equality of opportunities for men and women to elective and political party positions ... guaranteed by means of affirmative action in the regulation of political parties and in the electoral system."<sup>621</sup> In 2001, the National Electoral Chamber reasoned that affirmative action was not meant to exist to the detriment of the right to equality of opportunity for men, but to allow the second person running for political office to be of a different gender to that of the first candidate.<sup>622</sup> The number of women in the judicial system increased with the implementation of affirmative actions.<sup>623</sup>

### 3.6.1.3. *City*

The City Constitution includes the term "participatory democracy" to describe the form of government adopted by the City,<sup>624</sup> and states that "all governmental acts are public."<sup>625</sup> There is, as addressed in the text, a direct relation between democracy–participation–promotion of governmental acts. Legal provisions at the City level were

<sup>616</sup> Ibid., art 40; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 16–17, 358–60.

<sup>617</sup> OEA, *Am. Decl.*, art 20.

<sup>618</sup> Flores, "Women's Human Rights in the Framework of Argentine Domestic Law: Treatment since the Return to Democracy," 337.

<sup>619</sup> General Secretariat Organization of American States, "Access to Justice for Women Victims of Violence in the Americas," para. 115, footnote 155.

<sup>620</sup> Congreso de la Nación Argentina, *Ley de Cupo*, 24012; for a note in English about Law 24012 and provincial laws requiring a gender quota in government, see Flores, "Women's Human Rights in the Framework of Argentine Domestic Law: Treatment since the Return to Democracy," 336–337.

<sup>621</sup> Congreso General Constituyente, *Constitución Argentina*, art 37.

<sup>622</sup> Dalla Vía, "La protección de las minorías en el campo de los derechos políticos," 49.

<sup>623</sup> General Secretariat Organization of American States, "Access to Justice for Women Victims of Violence in the Americas," para. 103.

<sup>624</sup> Convención Constituyente, *Constitución de la Ciudad*, art 1.

<sup>625</sup> Ibid., art 1.

developed to provide people with additional chances to participate in the political arena, hence attending to participation. People can participate through: (i) the vote,<sup>626</sup> (ii) the chance to be a member of or to establish a political party,<sup>627</sup> (iii) the right to be elected,<sup>628</sup> (iv) the right to request the revocation of power of those who represent them (i.e. hold representatives accountable for their acts),<sup>629</sup> and (v) the right to present bills before the City Congress.<sup>630</sup> Legal scholars consider that the inclusion of the just-mentioned legal provisions on political rights and citizenship participation turned the electorate into a fourth power within the City Constitution.<sup>631</sup>

The section of the City Constitution on the political rights and citizenship participation reinforces the value of “participatory democracy” and recognizes political parties as the manifestation of the fundamental right of freedom of association. Political parties are therefore perceived as the main channel by which to express popular will. The City contributes to the sustainability of political parties by continually allocating economic resources and, therefore, supports the democratic design. Political parties are requested to assign a percentage of their allocated economic resources to capacity building and to research. Political parties are also required to make public the origin and the destination of their budget and patrimony. There is a limited amount, established by law, on how much political parties can spend during political campaigns and how long campaigns may last.<sup>632</sup> This policy increases the fair competition amongst parties. The City also grants full exercise of political rights (inherent in citizenship) in accordance with the form of government adopted by Argentina: republican, democratic, and representative.<sup>633</sup>

### 3.6.1.3.1. Public Prosecutor’s Office

Adequate participation between the PPO and groups of neighbours is considered essential by the PPO to strengthen its role in society. Prosecutors are, therefore, consigned to organize and/or participate in periodical neighbourhood meetings under the PPO and the Neighbours programme.<sup>634</sup> These meetings have taken place since 2008 and are meant to inform neighbours about the service provided by the PPO and to survey the types and characteristics of common problems they encounter.<sup>635</sup> The PPO and the Neighbours programme are a direct channel of communication between the PPO and neighbours because the latter can express their needs and worries which can be translated by the PPO into public policies.

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<sup>626</sup> Ibid., art 62.

<sup>627</sup> Ibid., art 61.

<sup>628</sup> Ibid., arts 61–62.

<sup>629</sup> Ibid., art 67.

<sup>630</sup> Ibid., art 64.

<sup>631</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 901, citing the argument of Sagüés.

<sup>632</sup> Convención Constituyente, *Constitución de la Ciudad*, art 61.

<sup>633</sup> Ibid., art 62.

<sup>634</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 72/08*, sec. IV.

<sup>635</sup> For a report on the characteristics and results of the 60 neighbourhood meetings undertaken during 2008–2009, see OFAVyT, “Informe sobre reuniones con vecinos y el MPF 2008–2009.”

### 3.6.1.4. *Partial Observations*

Democracy is a pillar of Argentine society. The original text of the Argentine Constitution contemplates orthodox ways of democratic participations (e.g. the vote, political parties). Semi-direct participation and popular consultation were introduced in 1994 to the text of the Argentine Constitution as two other options for citizens to participate in democracy. Legal provisions were introduced at the federal level to ensure equal participation in the political arena. The City Constitution incorporates an entire section on the political rights and citizenship participation reinforcing democratic participation. Some scholars even claim that the inclusion of that section turns the electorate into a fourth power (i.e. legislative, executive, judicial, and electorate). Internal regulations introduce the PPO and the Neighbours programme that organizes neighbourhood meetings. These meetings are public spaces where prosecutors meet with people to hear their needs, and result in ways in which to design or re-design public policies.

### 3.6.2. Awareness

This sub-section on the awareness of the right to democratic participation analyses how legal provisions incorporate mechanisms to communicate this right to Victims. It contemplates campaigns and programmes used as means of communication towards Victims and providers.

#### 3.6.2.1. *Constitutional and International*

The exercise of the right of democratic participation has need of information because this may create awareness and awareness may provoke a desire to participate. Information and awareness can thus create desire to participate in social change using available democratic tools. Some scholars consider the right to information implicitly recognized in article 33 of the Argentine Constitution, since that article recognizes rights that derive from the sovereignty of the people.<sup>636</sup>

Article 14 of the Argentine Constitution incorporates a more overarching principle when mentioning the right of people to teach and to learn.<sup>637</sup> This principle has ruled the country since 1853, showing the importance allocated to education, as it is considered by the Argentine Constitution necessary in order to achieve a strong democracy.<sup>638</sup> Consequently, article 75(19) on the power of the House of Deputies reads:

[The House of Deputies can] enact laws referring to the organization and basis of education consolidating national unity and respecting provincial and local characteristics; which ensure the state responsibility that cannot be delegated, family and society participation, the fostering of democratic values and equal opportunities and

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<sup>636</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 45; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 22, 299–302.

<sup>637</sup> Congreso General Constituyente, *Constitución Argentina*, art 14.

<sup>638</sup> Ibid., art 75(19); Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 578–84.

possibilities with no discrimination whatsoever; and which guarantee the principles of free and equitable state public education as well as the autonomy and autarky of national universities.<sup>639</sup>

This article, therefore, presents the attributions given to the House of Deputies to legislate in view of human development. The article gives to the educational system a primary role to foster values of democracy, equality of opportunities, non-discrimination, and responsibility. These principles are currently also extended by human rights treaties.<sup>640</sup>

The principle of publicity of governmental acts is also of value in the awareness framework, and has its foundation in the republican form of government introduced by article 1 of the Argentine Constitution. Human rights treaties make this principle of publicity explicit to the acts performed by the judicial system, such as criminal proceedings and court decisions.<sup>641</sup>

Civic training, as stated in a recommendation by UNESCO, needs also to be promoted by the educational system. This type of education enables “every person to gain knowledge of the method of operation and the work of organizations, whether local, national or international, to become acquainted with the procedures for solving fundamental problems, and to participate in the cultural life of the community and in public affairs.”<sup>642</sup> The role of teachers and their capacity to contribute to the provision on civic training of students becomes essential.<sup>643</sup> International and national coordination is also considered necessary for the efficiency of education.<sup>644</sup> Directly linked to the right to education is the right to information, because it is only with education that the information can be used with a given purpose. Education, consequently, is of major relevance for the emancipation of women because “a well-educated, enlightened and active mind, [that is] able to wander freely and widely, is one of the joys and rewards of human existence.”<sup>645</sup>

Legal scholars also highlight the importance of granting the right to information as a tool for free participation in society.<sup>646</sup> The right to information is considered closely related to the recognition of other rights allowing women to make informed and free decisions in every sphere of life.<sup>647</sup>

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<sup>639</sup> Congreso General Constituyente, *Constitución Argentina*, art 75(19). Translation by WIPO.

<sup>640</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 110–15.

<sup>641</sup> International Covenant on Civil and Political Rights, 999 UNTS 171 (1976), art 14(1); UNTS, *Pact of San José*, art 8(5).

<sup>642</sup> UNESCO, *Recommendation Concerning Education for International Understanding, Co-Operation and Peace and Education Relating to Human Rights and Fundamental Freedoms*, para. 13.

<sup>643</sup> *Ibid.*, paras. 33–37.

<sup>644</sup> *Ibid.*, paras. 7, 43–45.

<sup>645</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 456–57; “General Comment No. 13,” para. 1.

<sup>646</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 441.

<sup>647</sup> For an analysis of access to information on reproductive health, see *ibid.*, 441–52.



### 3.6.2.2. Federal

The right to democratic participation can be exercised if people are aware of the available options and rights. For example, voting in Argentina is mandatory.<sup>648</sup> It is a duty rather than a right,<sup>649</sup> and the state has managed to raise awareness in the population about this duty. Citizens are aware of this duty because strong and widespread electoral campaigns<sup>650</sup> are held before elections. Campaigns include advertisements on the streets, political parties visiting different neighbourhoods, and media presenting the positions of different candidates. Not complying with the duty to vote leads to a minor offence (i.e. monetary fine) and the possibility of becoming unable to assume public duties for three years.<sup>651</sup> A register for offenders is created to this effect,<sup>652</sup> and citizens can check online, using their ID number, and see whether they are listed as violators of the duty to vote.<sup>653</sup> The state, over time, has managed to make the population aware of this democratic duty, though no such emphasis has been given to the awareness of the people of other forms of democratic participation. Law 26485, as mentioned earlier, recognizes the importance of informing Victims of the legal procedure and therefore promotes an active participation.<sup>654</sup> It is the role of providers, who assist Victims at all instances of the process, to inform them of rights and available organizations, where and how to obtain assistance in the process, and how to preserve evidence.<sup>655</sup> These types of regulations are important within the LE framework due to their potential to increase the participation of vulnerable groups. Becoming aware of rights and options might also foster opinions and desire for change. These desires for change might trigger activist movements suggesting changes to better comply with the needs of different groups. However, this form of participation is not often used.

### 3.6.2.3. City

The City Constitution ensures the right to communicate, request, disseminate, and receive information freely. Furthermore, it recognizes the right to expression using any channel of communication,<sup>656</sup> giving relevance to the media,<sup>657</sup> and to the

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<sup>648</sup> Congreso General Constituyente, *Constitución Argentina*, art 37.

<sup>649</sup> The duty to vote has existed in Argentina since 1912 with the enactment of Law 8871 (known as Law Sáenz Peña), which was amended by Poder Ejecutivo Nacional, *Código Electoral Nacional*. Art 12 addresses the duty to vote.

<sup>650</sup> *Ibid.*, art 64bis on electoral campaigns.

<sup>651</sup> *Ibid.*, arts 125–126.

<sup>652</sup> *Ibid.*, art 18.

<sup>653</sup> Justicia Nacional Electoral, “Registro de infractores al deber de votar”; the mechanisms implemented to enforce these penalties depend on the executive. During some political periods the duty to vote was known not to be enforced; while during other periods the executive allocated resources to enforce penalties, creating a very expensive burden on the state, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 329.

<sup>654</sup> Congreso de la Nación Argentina, *Ley 26485*, art 16(g).

<sup>655</sup> *Ibid.*, art 36.

<sup>656</sup> Convención Constituyente, *Constitución de la Ciudad*, art 12(2).

<sup>657</sup> On the right to information, communication, and free press, see Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 45–47.

Internet. This last channel has become an important source to disseminate information on the right of people to participate in governmental decisions<sup>658</sup> and to communicate with the executive.<sup>659</sup>

Law 104 on the right to information highlights the importance of making information public.<sup>660</sup> Moreover, the law grants the right of people to request and receive information from organizations.<sup>661</sup> That information has to be complete, adequate, timely, accurate,<sup>662</sup> and available.<sup>663</sup> The use of this right can also offer tools to improve transparency and accountability: two important tools for democratic participation.

The work of NGOs is important at the City level when trying to raise awareness on the need for accurate communication between the state and the people. Reports drafted by *Unidos por la Justicia*<sup>664</sup> provide an explanation of how the judicial system is designed, acknowledging the difficulties faced by people when trying to obtain information on how the judicial system functions.<sup>665</sup> The judicial system currently requires, through internal regulations and court decisions, the publicity of court decisions.<sup>666</sup>

#### 3.6.2.3.1. Public Prosecutor's Office

An e-communication culture is emerging in state organizations. The Internet is the main tool to ensure the right of people to receive information regarding the performance of the City and for internal communication.<sup>667</sup> Efforts to synchronize IT systems to improve the communication between Legal Organizations (e.g. City Attorney and courts) also exist.<sup>668</sup> Furthermore, internal documentation should be provided and received only via e-mail and hence reach a more effective, expeditious, and transparent communication.<sup>669</sup> Internal regulations consequently address the need for Internet literacy amongst providers (e.g. requiring daily use of their e-mail

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<sup>658</sup> e.g. Buenos Aires Ciudad, "Audiencias Públicas."

<sup>659</sup> e.g. "Gestión Comunal y Atención Ciudadana."

<sup>660</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 104*.

<sup>661</sup> *Ibid.*

<sup>662</sup> *Ibid.*, art 104.

<sup>663</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 162/08* citing the work of Miguel Ángel Ekmekdjian.

<sup>664</sup> Unidos por la Justicia, "Unidos por la Justicia."

<sup>665</sup> e.g. Garavano et al., *Información & Justicia III*; Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 162/08*.

<sup>666</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 162/08* referring to acordada 35/2003, acordada 1/2004, and acordada 2/2004, and to the leading court decision in "Kook Weskott, Matías s/abuso deshonesto."

<sup>667</sup> Regional recommendations "approved at the Internet and Judicial System Seminar held in the city of Heredia (Costa Rica), on July 8th and 9th, 2003 with the participation of the judicial system, civil society organizations and academicians of Argentina, Brazil, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Dominican Republic and Uruguay." For a list of the organizations available to the public in Argentina, see IIJusticia, *Minimal Rules for the Difusion of the Judicial Inforamtion in Internet*.

<sup>668</sup> e.g. Juscaba, "Juscaba."

<sup>669</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 162/08*.

accounts), and provide prosecutors and secretaries with a telephone with personal digital assistant (PDA) to guarantee reception of messages.<sup>670</sup>

A systematized way of ordering the information provided by the City Attorney is implemented.<sup>671</sup> This systematization aims at a better access to and transparency of information. Yet, there is no note on the use of a plain vocabulary or way of presenting the documentations for the information to be more accessible and understandable for people. The Office of Systematization of Decisions and Internal Regulations was especially created to strengthen policies of diffusion and transparency of internal regulations of the City Attorney.<sup>672</sup>

#### *3.6.2.4. Partial Observations*

Information may create awareness and awareness may activate a desire to participate; therefore, the importance of education to trigger democratic participation. Information can be freely assessed and used only by those with education; therefore, the importance of the educational system. Education, as considered by legal provisions, is an intrinsic human right and a means by which to exercise other rights. Campaigns, the Internet, and programmes are means to communicate to people their right to democratic participation. The City incorporated e-platforms, apps, and a decentralized PPO to allow for the awareness of the right to democratic participation. Consequently, the new channels and information for the public to participate democratically increase the need for an educational system that assists people in acquiring skills to understand the new forms of communication.

### **3.6.3. Enablement**

This sub-section on the enablement of the right to democratic participation analyses legal provisions that facilitate the participation of Victims in the public policy process. It looks at the tools, mechanisms, and programmes that are available for Victims to participate in democracy.

#### *3.6.3.1. Constitutional and International*

Article 14 of the Argentine Constitution gives the right to the people to submit petitions to legislators requiring their obligation to provide a response.<sup>673</sup> That article protects the right to freedom of expression. Freedom of expression is perceived as a means to facilitate and stimulate the democratic process, because it improves and enables the debate on public interest matters. Freedom of expression also facilitates the debate on different political options available to the public, stimulating self-

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<sup>670</sup> Ibid.

<sup>671</sup> Documents are identified to facilitate access and transparency (e.g. listing internal regulations in chronological order), *ibid.*

<sup>672</sup> Ibid.

<sup>673</sup> Congreso General Constituyente, *Constitución Argentina*, art 14; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 82–83.

judgment and the conscious selection or proposition of ideas to improve the public sphere.<sup>674</sup>

The distribution of power allows democracy and fosters democratic participation. The Argentine Constitution introduces two forms of participation that enable democratic participation: a representative form and a semi-direct form, as stated in 3.4.3.1. The representative form allows people to be candidates and to be elected in public elections. Argentinians can present themselves as candidates for the House of Deputies,<sup>675</sup> for the Senate,<sup>676</sup> and for the Presidency.<sup>677</sup> Each of these candidacies needs to comply with prerequisites established by the Argentine Constitution. The Constitution also establishes how state employees are selected. There are two overarching categories of state employees, those with a political position (i.e. elected through public elections or appointed by the politician in service, and with temporary positions based on their mandate) and civil servants (i.e. public officials who stay in service independently of the political party in power). The semi-direct participation gives citizens the possibility to present bills to Congress.

The inclusion of a Chief of the Cabinet of Ministers in 1994 can be viewed as an attempt to reduce the power of the Argentine President and to strengthen democracy.<sup>678</sup> The Chief of the Cabinet of Ministers coordinates the ministers and is subordinate to the President and Congress.<sup>679</sup>

The ombudsman serves as a tool for people to gain a voice in a democratic system. The ombudsman has a preventive and restorative function and, within its restorative function, can present a writ of *amparo* (3.3.3.1.) to protect the rights of the participants

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<sup>674</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 88–89.

<sup>675</sup> To become a member of the House of Deputies, the Constitution requires: 25 years of age, being for 4 years a fully qualified citizen, and to either be a native of the province or to have 2 years of immediate residence in that province. Members are elected by citizens of each province, and the House of Deputies encompasses one representative per 33,000 inhabitants of the province. Members of the House of Deputies stay in office for 4 years, with the chance to be re-elected for 4 years more; to be elected for the Senate, the Constitution requires: 30 years of age, being for 6 years a fully qualified citizen, an annual income of two thousand strong pesos or similar revenue, and to either be a native of the province or to have 2 years of immediate residence in that province. The annual income requirement can be perceived as a violation of the principle of equality, though the implementation of this requirement is doubtful. Senators stay in office for 6 years and can be indefinitely re-elected, see Congreso General Constituyente, *Constitución Argentina*, arts 45–51; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 487.

<sup>676</sup> Congreso General Constituyente, *Constitución Argentina*, arts 54–58.

<sup>677</sup> To be President or Vice-President, the Constitution requires the candidate to have been born in Argentina or to be born of a native Argentine citizen in a foreign country. The other requirements stay the same as for Senators. The President stays in office for 4 years and can be re-elected once. Within the public policy area, the President has the power to draft executive orders to regulate a law passed by Congress. Under this capacity, the President regulates what becomes necessary for the implementation of a law, preserving its spirit. Furthermore, the President has the power to name the members of the Argentine Supreme Court, after two-thirds of the Senate approves this decision, and to name judges based on the proposals given by the Council of Magistrates of the Nation, and after the approval of the Senate, see *ibid.*, arts 87–93; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 693–94.

<sup>678</sup> Congreso General Constituyente, *Constitución Argentina*, art 100; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 728.

<sup>679</sup> Congreso General Constituyente, *Constitución Argentina*, art 100.

in a collective action.<sup>680</sup> This is another tool for the people to claim for collective action rights and increases their chances to obtain access to justice.<sup>681</sup>

The Pact of San José includes in article 23 the rights and opportunities of citizens to participate in government. The elements given by this convention to enable the right to democratic participation in government include the right to be elected and to freely elect through a vote.<sup>682</sup> Voting is considered the tool to enable democratic participation, and it has to be secret and universal in order to ensure that it represents the free decision of citizens.<sup>683</sup>

### 3.6.3.2. Federal

Law 24747 regulates article 39 of the Argentine Constitution and provides the procedure and requirements needed for people to submit bills before the House of Deputies.<sup>684</sup> The law, for example, states the number of signatures needed, the type of information required, and the place where the bill has to be submitted. Yet, there seem not to be other mechanisms to enable the use of this constitutional right. People are therefore constrained to know about the existence of this law or to have access to the ombudsman (as stated above).

Executive Order 1172/03 aims at strengthening the relation between the executive and the civil society. A smooth communication between the public administration and the civil society is necessary to develop institutional reforms in view of a transparent, efficient, and legitimate democracy. Communication, as understood by Executive Order 1172/03, is improved by ensuring the constitutional principle of publicity of governmental acts and the right of the people to obtain access to public information.<sup>685</sup> Access to public information is also considered necessary to allow people to hold the authorities accountable for their acts (e.g. control corruption<sup>686</sup>). Public Hearings are introduced as a space where people can participate in their areas of interest by presenting opinions, experiences, and knowledge, individually or collectively.<sup>687</sup> The opinions presented during Public Hearings are not binding though they will be considered and, if dismissed, the authority has to justify their dismissal. The procedure for the Public Hearings respects the principles of equality, publicity, orality, and must be informal and free. However, to request a Public Hearing people have to be registered in a registry to that effect and have to submit a written request expressing the points to be addressed and the supporting documentation.

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<sup>680</sup> For further information on the writ of *amparo* and the ombudsman in Argentina, see Reif, “Building Democratic Institutions,” 57–62.

<sup>681</sup> Congreso General Constituyente, *Constitución Argentina*, arts 43 and 86; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 656–57.

<sup>682</sup> UNTS, *Pact of San José*, art 23(1.a)(1.c).

<sup>683</sup> *Ibid.*, art 23(1.b)(2).

<sup>684</sup> Congreso de la Nación Argentina, *Reglamentación de la Ley de Iniciativa Popular*.

<sup>685</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1172/03*.

<sup>686</sup> e.g. guidelines designed by an organization to fight corruption, see Oficina Anticorrupción, “Herramientas para la transparencia en la gestión. Participación ciudadana.”

<sup>687</sup> For a description of how to request or participate in Public Hearings, see Poder Ejecutivo de la Nación, *Decreto Reglamentario 1172/03*.

Announcements of Public Hearings have to be made available in the official gazette for two days and at least twenty days before that hearing is to take place.<sup>688</sup> Furthermore, the general public and the media are allowed to participate in the Public Hearings.<sup>689</sup> The official gazette, originally distributed in paper form, is currently also available online, improving accessibility. This gazette makes governmental enactments available to the public (e.g. laws, notifications of judicial summons).<sup>690</sup>

The Sub-secretariat for the Institutional Reform and Strengthening of Democracy was created under the Chief of the Cabinet of Ministers.<sup>691</sup> This sub-secretariat coordinates, amongst other things, the proceedings of Public Hearings and the access to public information. Therefore, it promotes the implementation of a representative form and a semi-direct form at the federal level. Most activities of this sub-secretariat, as publicized online, were performed during the period 2004-2014.<sup>692</sup> Neighbourhood Booths, created in 2011, are another initiative by the Argentine Ministry of Security to involve the community in the efforts to tackle violence and crime.<sup>693</sup> The community is consulted and asked to participate in the design and implementation of security public policies. Neighbourhood Booths, therefore, provide a space of communication between the state and the community (the police can also be invited to participate). They aim at the elaboration of preventive strategies against violence and crime, at the evaluation of actions performed to tackle problems, and at the design of activities to promote and disseminate preventive strategies.<sup>694</sup>

### 3.6.3.3. *City*

The City Constitution creates the Council of Strategic Planning<sup>695</sup> to improve the substance of the policies implemented. The substance of the policies, as seen by the constitutional convention, can be achieved or improved when the policies express the common needs of society.<sup>696</sup> Communication between the electorate and the public administration is therefore recommended. Different registered state organizations are

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<sup>688</sup> Ibid., art 16; references to Public Hearings are available online (e.g. 49 Public Hearings took place in 2005, 15 in 2006, 4 in 2007, 8 in 2008, 8 in 2009, 5 in 2010, 8 in 2011, and 3 in 2012), see Boletín Oficial de la República Argentina, “Audiencias Públicas.”

<sup>689</sup> Poder Ejecutivo de la Nación, *Decreto Reglamentario 1172/03*, art 15.

<sup>690</sup> Boletín Oficial, “Boletín Oficial de la República Argentina.”

<sup>691</sup> Jefatura de Gabinete de Ministros, “Subsecretaría para la Reforma Institucional y Fortalecimiento de la Democracia.”

<sup>692</sup> A manual with the activities undertaken by the Sub-secretariat for the Institutional Reform and Strengthening of Democracy is the only information available online in relation to the type of activities performed, see Subsecretaría para la Reforma Institucional y Fortalecimiento de la Democracia, “Área de Implementación de Políticas Participativas. Informe Anual 2008”; however, that Sub-secretariat coordinated a website named “[www.mejordemocracia.gov.ar](http://www.mejordemocracia.gov.ar).” This website contained information for people to participate in democracy. It was accessible to the public from 09.2004 until 08.2014. For a description of what information this website contained, see the archives at “Internet Archive Wayback Machine.”

<sup>693</sup> Ministerio de Seguridad, *Resolución 296/11: Mesas Barriales*.

<sup>694</sup> Ibid.; Ministerio de Seguridad, “Mesas Barriales.”

<sup>695</sup> Convención Constituyente, *Constitución de la Ciudad*, art 19; Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 310*, 310; Buenos Aires Ciudad, “Consejo de Planeamiento Estratégico.”

<sup>696</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Ley 310*, art 2.

consequently consulted by political actors on public policy matters<sup>697</sup> and the Council of Strategic Planning is given the legislative capacity to present bills before the legislature.<sup>698</sup>

Representatives are given additional tools to communicate with the community. Therefore, the legislature and the executive of the City, together with the districts, can call for Public Hearings to debate matters of general interest.<sup>699</sup> People who wish to participate in Public Hearings, which are scheduled and available online, need to register in advance. Participants, when requested, are granted with the right to present their arguments and ideas, which are not binding.<sup>700</sup> The electorate, additionally, can be consulted through mandatory referendums in matters related to the sanction, amendment, or derogation of provisions (excluding treaties and those provisions that require a full majority for approval).<sup>701</sup> The legislature and executive of the City, together with the districts, can call for non-mandatory popular consultations in matters falling under their competencies. People are not obliged to vote under this last scenario.

The City House of Deputies, the Executive of the City, the City Public Defender, the districts, and citizens can present bills before the City Congress.<sup>702</sup> Once bills are received, the City Congress has to make them public for thirty days, but only after first receiving approval by the House of Deputies. During the thirty-day period the City Congress accepts observations on the bills. The City Congress, however, is not bound to adopt those observations.<sup>703</sup>

Districts make available, on their websites, ways for people to participate in the projects to be selected.<sup>704</sup> Even though this initiative is purposely meant to increase the democratic participation of people, it may become selective if the opportunity to use the provided tool (e.g. the Internet) does not become visible, achievable, and usable. Therefore, the question that needs to be addressed is whether the Internet, as a channel of communication, actually manages to provide information to all.

The City has introduced innovative strategies to enable democratic participation, beyond the above-mentioned initiatives. Some of the strategies are: (i) proximity to public buildings (e.g. decentralization); (ii) e-platforms where people can communicate with the City; and (iii) booths located at metro stations where people, while waiting for the metro, can submit, amongst other things, claims related to the service and requests

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<sup>697</sup> To participate in the Council of Strategic Planning, organizations have to represent labour, production, religion, culture, education, political parties or other NGOs performing within the territory of the City, see *ibid.*, art 3; a list of the organizations currently consulted by the Council of Strategic Planning is available at “Organizaciones”; moreover, registration forms are accessible online and available at Consejo de Planeamiento Estratégico, “Formulario de Inscripción al Registro de Entidades del CoPE.”

<sup>698</sup> Convención Constituyente, *Constitución de la Ciudad*, art 19.

<sup>699</sup> *Ibid.*, art 64.

<sup>700</sup> For further information on how to participate in Public Hearings in the City, see Buenos Aires Ciudad, “Audiencias Públicas.”

<sup>701</sup> Convención Constituyente, *Constitución de la Ciudad*, art 65.

<sup>702</sup> *Ibid.*, art 85.

<sup>703</sup> *Ibid.*, art 90.

<sup>704</sup> Buenos Aires Ciudad, “Comunas.”

for appointments to present claims (the same service is available online).<sup>705</sup> Claims, and the follow-up of claims, can also be made by downloading an app,<sup>706</sup> via telephone (dialling 147), or on Facebook.<sup>707</sup>

#### 3.6.3.3.1. Public Prosecutor's Office

People can enable their right to democratic participation by becoming involved in the neighbourhood meetings that are held periodically and are part of the PPO and the Neighbours programme. Neighbourhood meetings were mentioned above in 3.6.1.3.1. Moreover, and as stated in 3.6.2.3.1., the Internet is being used by the PPO as a primary tool by which to improve communication with society and to allow and improve the participation of people.

#### 3.6.3.4. *Partial Observations*

The distribution of power is the classic form adopted by states to enable democratic participation because it reduces abuse, allowing for broader participation. Therefore, the Argentine and City constitutions provide options for people to be elected as representatives. Furthermore, those not elected as representatives can present bills before the Argentine and City congresses. Other options were introduced to make feasible the communication by the people with their representatives. Examples of those communicational options are found in: the ombudsman, introduced by the Argentine Constitution; the Public Hearings, introduced by federal law; the Neighbourhood Booths, introduced by the Ministry of Security; and e-platforms, apps, and telephone lines, introduced by the City. All these strategies, as addressed by legal provisions, aim at strengthening communication. Federal legal provisions additionally consider that the delivery of accurate, transparent, and accessible information on the acts by representatives is an important element to enable the participation of the people.

### 3.6.4. Enforcement

This sub-section on the enforcement of the right to democratic participation studies legal provisions that address how Victims can execute that right. It examines the ways available for Victims to enforce their right to communicate with the state and participate in policy design.

#### 3.6.4.1. *Constitutional and International*

The Argentine Constitution recognizes in article 14 the right to freely associate for “useful principles.” This nineteenth-century article, together with articles 42 and 43 (introduced in 1994), recognize the importance of granting equal opportunities to

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<sup>705</sup> Buenos Aires Ciudad, “Línea B: Instalamos nuevas terminales de autoconsulta.”

<sup>706</sup> Buenos Aires Ciudad, “BA 147 (App)”; another app is available for people to submit complaints on traffic violations (e.g. parking in unauthorized places, stopping over the zebra crossing), see Buenos Aires Ciudad, “BA Denuncia Vial (App).”

<sup>707</sup> Buenos Aires Ciudad, “BA 147 (Facebook).”



people and civil societies to freely associate, hence acquiring another means of expression.<sup>708</sup> The state has the duty to provide opportunities for associations to emerge, avoiding discrimination. The principle of free association is important for the LE framework because it recognizes the significance of the gathering together, the assembling, of people with similar interests to trigger democratic participation.

Trial by jury is perceived as another way by which to democratize the judicial system, because it favours “the people’s integration into and identification with the judicial system.”<sup>709</sup> Trial by jury triggers the understanding of the law by lay people, and reduces unnecessary legal technicality and procedural bureaucracy. Furthermore, trial by jury contributes to transparency since decisions are made as the result of popular participation, while they further stimulate social debates.<sup>710</sup> The Argentine Constitution, since its original text of 1853, includes a legal provision granting Congress the duty to establish trial by jury, finding inspiration in the US Constitution.<sup>711</sup> Congress, however, never legislated on this provision.<sup>712</sup> Therefore, even when recognized for almost two centuries, generations of legislators have not materialized that constitutional precept. Trial by jury, as incorporated in the Argentine Constitution, can only be considered for criminal matters (excluding impeachments). This last constitutional text does not recognize the value of trial by jury for civil matters, yet trial by jury for civil matters is still recommended by scholars as a form of democratizing judicial decisions or, as stated by Tocqueville, as an instrument for people to exercise their sovereignty.<sup>713</sup>

The Argentine Constitution introduces mechanisms of accountability (i.e. impeachment) to hold public officials accountable for their acts. These mechanisms seek to reduce abuses by those elected to be in power. Impeachments are public, due

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<sup>708</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 104–5.

<sup>709</sup> Gargarella, “‘Too Far Removed from the People’ Access to Justice for the Poor: The Case of Latin America,” 7–8 citing “Democracy in America” by Alexis de Tocqueville.

<sup>710</sup> AAJJ is an NGO working on the incorporation of trials by jury and performing research, seminars, and consultancies, see AAJJ, “Asociación Argentina de Juicio por Jurados”; AAJJ, “Declaración de principios de la Asociación Argentina de Juicio por Jurados.”

<sup>711</sup> Congreso General Constituyente, *Constitución Argentina*, arts 24, 75(12) [former 67(11)], 118 [former 102]; Gelli explains that the duty to establish the jury given to the Argentine Congress is an exception to the attributions given to that Congress because the administration of justice is a duty granted to the provinces. Moreover, under this duty, Congress should pass a law establishing the rules for the jury (e.g. composition of the jury, requirements to become part of the jury, activity undertaken by the jury, and majorities needed to grant a decision). Not legislating on this matter constitutes, in the reasoning of Gelli, a violation of the Argentine Constitution, see Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 240, 834.

<sup>712</sup> Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 238–40; for a brief description, in English, on the introduction of trial by jury in Argentina, see Hendler, “Lay Participation in Argentina: Recent Experience and New Trends.”

<sup>713</sup> Gargarella, “‘Too Far Removed from the People’ Access to Justice for the Poor: The Case of Latin America,” 7–8; for a reflection on the importance of trial by jury in a democracy, see Tocqueville, *Democracy in America*, vol. I, chapter 32.

to the prevalence of the public interest over the right to the privacy of the public officials.<sup>714</sup>

#### 3.6.4.2. *Federal*

The state of affairs seems to indicate a lack of specific legal provisions for people to enforce their right to democratic participation. However, initiatives such as gender quota laws, as stated in 3.3.1.2. Federal, may contribute to a democratic representation, and therefore, facilitate the exercise of the right to democratic participation to every member of society.<sup>715</sup>

Congress, as stated above, has not yet drafted a federal law to regulate trial by jury. Notwithstanding this, trial by jury has been introduced in the criminal procedures of some Argentine provinces.<sup>716</sup> For example, in 2004 the province of Córdoba was the first to incorporate (through Law 9182) a mixed tribunal composed of lay people and judges.<sup>717</sup> In 2011, the province of Neuquén incorporated trial by jury in its new Criminal Procedure Code. Two years later, the province of Buenos Aires incorporated trial by jury in its Criminal Procedure Code.<sup>718</sup> The 2014 Argentine Criminal Procedural Code Project incorporates trial by jury as a juridical organism that is able to grant justice.<sup>719</sup> Article 249 of that project states that the form and function of trial by jury shall be regulated by a special law.

#### 3.6.4.3. *City*

The City Constitution incorporates trial by jury by adopting the adversarial system.<sup>720</sup> It should be noted that the adversarial system is an exception within the Argentine procedure. The City Constitution makes clear that the local legislature has the capacity to enact codes and special laws dealing with, amongst other things, trial by jury.<sup>721</sup> The CCPC, however, does not incorporate trial by jury even though proposed in previous drafts.<sup>722</sup> The non-incorporation of trial by jury in the CCPC has been subject to criticisms. Some scholars claim that the non-incorporation reflects that the CCPC still

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<sup>714</sup> The Senate judges public officials during public trials while the House of Deputies impeaches them, see Congreso General Constituyente, *Constitución Argentina*, art 59; Gelli, *Constitución de la Nación Argentina: comentada y concordada*, 485–87.

<sup>715</sup> Gargarella argues that judges “tend to rule in the interest of their own class, racial, or particular social group,” see Gargarella, “‘Too Far Removed from the People’ Access to Justice for the Poor: The Case of Latin America,” 9.

<sup>716</sup> For a list of provincial legal provisions adopting trial by jury, see “Asociación Argentina de Juicio por Jurados.”

<sup>717</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Juicios por Jurados*; Hendler, “Lay Participation in Argentina: Recent Experience and New Trends.”

<sup>718</sup> The first trial by jury took place in 2015 and in the province of Buenos Aires, see Llenas, “First Jury in History of Buenos Aires, Argentina Finds Defendant ‘Not Guilty’”; Congreso de la Provincia de Buenos Aires, *Código Procesal Penal de La Provincia de Buenos Aires*, art 1.

<sup>719</sup> *Proyecto de Código Procesal Penal de la Nación*, art 52(c).

<sup>720</sup> Convención Constituyente, *Constitución de la Ciudad*, arts 13(3) and 81(2).

<sup>721</sup> *Ibid.*, art 81(2).

<sup>722</sup> Cevasco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*, 55.

entails anti-democratic and inquisitorial ideals that contradict the overall spirit of the text.<sup>723</sup>

#### 3.6.4.3.1. Public Prosecutor's Office

The design of the PPO, as above described, aims at engaging the community in its activities and procedures. The state of affairs seems to indicate that there are no internal regulations that explicitly include means to enforce the right to democratic participation.

#### 3.6.4.4. *Partial Observations*

Democratization of the judicial system can be perceived as a need for achieving a democratized enforcement. For example, Gender Quotas laws and trial by jury (as introduced by the Argentine and City constitutions) are ways in which to allow diversity in the composition of the judicial system, reflecting, consequently, the diversity of interests existing in society. Furthermore, the right of freedom of association increases democratic participation amongst those with similar interests. Finally, transparency and mechanisms to control those in power are also needed to enforce the right to democratic participation (e.g. impeachments).

### 3.7. Concluding Observations

The LE framework is applied in this chapter to four guiding rights: a life free of discrimination and violence for women, access to justice, remedy, and democratic participation. Each guiding right is studied under the four components of the LE framework: enhancement, awareness, enablement, and enforcement. The following concluding remarks address the analysis in a different order, aiming to highlight the LE framework and to provide comprehensive concluding observations. Accordingly, the four components of the LE framework are hereby presented and within each of these components the four guiding rights are comprehensively analysed.

#### 3.7.1. Rights Enhancement

The sub-sections of this chapter that deal with the enhancement of each guiding right analyse how legal provisions advance in relation to those four rights. Advancement is understood as the introduction of legal provisions devised to eliminate restrictions and to create real opportunities for Victims to be recognized as users of those rights. The elimination of restrictions and the creation of real opportunities are studied from the perspective of availability of legal mechanisms to allow, on the one hand, access to justice and participation in policy design and, on the other hand, to allow a real chance to resolve conflicts brought by Victims. Within this reasoning, the different sub-sections incorporate the legal provisions that allow Victims to reduce dependency on resources that may constrain their chances to use legal provisions as a tool for empowerment (e.g. awareness of options available, procedural costs, legal

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<sup>723</sup> Ibid., 55–58.

representation costs, impediments to understanding procedural and substantive rights, impediments to making use of those rights and to access to a transparent and fair judicial system).

Conflicts related to Victims are understood by legal provisions as discriminatory acts based on gender. These discriminatory acts build on a historical unequal power relation between men and women. The historical element derives from the construction of strong stereotypes around women. In the words of Simone de Beauvoir: “One is not born, but rather becomes, a woman.” Recent legal provisions aim at freeing women from discriminatory stereotypes. Consequently, the improvement of access to justice and conflict resolution for Victims is contemplated by legal provisions as an arduous task. The task is arduous because it needs to tackle discrimination and violence in every context where women perform regular activities (e.g. home, work); in every platform that uses the image of women (e.g. media); in legal provisions that refer to women (e.g. addressing the role of women within the family); and in every activity of providers who assist women (e.g. judges hearing domestic violence cases).

Access to justice is treated by legal provisions as a comprehensive term. The term broadens the classic assimilation to access to trial and recognizes other mechanisms to deliver justice, giving relevance to all actors involved in the path to justice (e.g. accused, accuser, providers). Vulnerable groups to access to justice are directly addressed by the letter of the law, and strategies to facilitate access to these groups have been introduced. There have been no significant changes, however, in addressing the legal terminology as another obstacle to access. Advancement on accessibility can therefore be perceived mostly in terms of location and costs, yet not in terms of understanding. Participants gain relevance in the legal procedure, however.

The analysis of legal provisions shows a tendency to adjust solutions to the characteristics of problems. The focus then starts to deviate, moving from a previous paradigm focused on finding an appropriate punishment for abusers towards a new paradigm focused on granting Victims a right to resolve conflicts through suitable remedies. Therefore, the inclusion of alternative dispute resolution mechanisms appears as a current mechanism designed to allow parties a higher participation and to improve the search for resolutions of their conflicts. Even in the case of the PPO, where there is a social interest in searching for resolutions of conflicts, parties gain relevance and are treated, to some extent, as significant actors with the capacity to resolve conflicts.

The adversarial design of the CCPC incorporates a preliminary investigation stage allowing for a more informal setting where parties and the PPO intend to collect evidence and search for remedies. Remedies are, moreover, perceived in a holistic way, and legal provisions abandon the perception in which law is seen as the only source available to resolve conflicts and recognize that other resources can assist in the resolution of conflicts. The way the judicial system handles the process to search for a remedy is perceived as also serving a preventive role and, therefore, becomes

equally important for parties and the people. The studied legal provisions also address the communication between state organizations and quality of the service delivered.

Inclusion of legal provisions tends to promote ways of democratic participation. Classic forms address how the represented can communicate with the representatives (e.g. through the vote). Recent forms, however, introduce other channels for representatives to approach the represented (and vice-versa), allowing for participation and accountability (e.g. popular consultation, semi-democratic participation, impeachment). Technology is perceived as the main tool at the federal and City levels to facilitate the before-mentioned enhancements (e.g. e-platforms, apps). Lastly, it is worth mentioning that international legal standards highly influence domestic legal provisions. This influence can be clearly perceived, making the judicial system permeable to the acceptance of international legal provisions and responsive to international duties.

### **3.7.2. Rights Awareness**

The sub-sections of this chapter that deal with the awareness of each guiding right analyse how legal provisions inform or introduce tools to generate awareness in people of the existence of those four rights. Awareness represents the cognitive component of the LE framework. Consequently, the rights awareness sub-sections examine, on the one hand, the way in which legal provisions incorporate different means and techniques to communicate to the people their rights, and, on the other hand, the way in which those provisions address mechanisms to ensure that providers are aware of the legal changes and of their proper application and interpretation.

The more group-oriented a legal provision is (e.g. tailor-made legal provisions such as Law 26485), the more that provision addresses the awareness of the rights of those groups. General legal provisions consider visibility and clarity as necessary elements to increase rights awareness. The way in which legal provisions are written and the way Legal Organizations deliver their services are therefore necessary elements to improving rights awareness. Tailor-made legal provisions, differently from general legal provisions, incorporate specific forms of campaigns and incorporate an oriented purpose for the awareness of rights (e.g. the purpose to introduce gender perspective).

This type of legal provision provides more tangible directions to implement policies. For example, in the case of gender violence and discrimination, legal provisions address the need to educate people from an early age on non-discriminatory behaviours. Furthermore, these tailor-made legal provisions highlight the importance of increasing awareness of the existence of rights and the availability of Legal Organizations to assist in the resolution of conflicts. Tailor-made legal provisions consider legal conflicts as triggering consequences that go beyond the legal aspect. Consequently, legal conflicts need to be addressed by legal provisions and Legal Organizations in a holistic way. Consequently, rights awareness is perceived by tailor-made legal provisions in a holistic way.

Legal provisions suggest mechanisms by which to make people aware of their rights. Some of these provisions aim at the entire population and others aim at those who

accessed the judicial system. Rights awareness, as perceived from the analysis of legal provisions, can be made possible through classic forms (e.g. public campaigns) and non-classic forms (e.g. the Internet and e-tools). Rights awareness is perceived as being related to the right to information. Receiving or obtaining information, within the LE framework, is connected to the capacity of people to make decisions and therefore participate in the process. Rights awareness is also related to the participation of people in the policy process, and publicity of governmental acts are incorporated as a tool to increase democratic participation. Legal Organizations are also considered important tools by which to make people aware of their rights.

The legal provisions analysed in this chapter highlight the importance of providers in legally informing those who obtain access to justice. The importance responds to two ideas: on the one hand, it responds to the principle of informing people of their rights (right to be informed); and, on the other hand, it responds to the need to increase the participation of the parties, enabling them to make informed decisions throughout the legal proceedings.

Rights awareness, as it can be perceived from each sub-section in this chapter, is still under development. Further legal efforts need to be incorporated to allow for legal provisions to exploit all their potentiality as tools for LE. Therefore, the judicial system also needs to change its intrinsic dynamic to allow for a fluid participation of lay parties. However, even if the judicial system changes, and even if large-scale advertisements become available and providers inform Victims with the most effective techniques, all efforts remain obsolete if people do not have the required education to understand and assess that information. This observation is confirmed in chapters 4 and 5 of this study.

### **3.7.3. Rights Enablement**

The sub-sections of this chapter that deal with the enablement of each guiding right analyse how legal provisions introduce tools to facilitate the exercise of those four rights. The introduction and promotion of tools, mechanisms, and programmes to enable Victims to use guiding rights is examined in each sub-section. Procedural law and the legal provisions that advocate for the creation of Legal Organizations become of major relevance for the analysis of rights enablement.

Legal Organizations are treated, by the legal provisions studied in this chapter, as necessary for enabling people to exercise the four guiding rights. These Legal Organizations, together with new procedures, reflect a legal tendency aiming at increasing the chances of Victims to get hold of conflicts, increasing the participation in the legal procedure and, ultimately, increasing participation in the policy process. Some of the relevant advancements to rights enablement, in the context of LE, are: the proximity of the law and Legal Organizations to the community; the creation of specialized Legal Organizations, and the implementation of clear and transparent procedures adjusted to the needs of people; and the broadening of channels of participation. The situation of different groups, in terms of vulnerability to access to justice, to conflict resolution, to violence, and to democratic participation is explicitly

addressed by the legal provisions analysed in this chapter. Multidisciplinary units (e.g. OVD and OFAVyT) were created to enable the exercise of rights by Victims. The Internet is perceived as another resource to enable the exercise of rights, by means of publishing lists of available resources and by allowing for the submission of complaints.

The City could still introduce more forms to enable the use of rights when compared with other jurisdictions. More forms could be introduced, for example mechanisms for self-completion of pre-drafted forms or new platforms for Victims to start exercising rights, following pre-supplied directions. Even when those initiatives provide people with tools to enable the use of rights, they need to be well articulated with an awareness strategy in order to allow for the necessary level of capacity to assess the implications of acts, avoiding a blind trust in those pre-supplied forms.

#### **3.7.4. Rights Enforcement**

The sub-sections of this chapter that deal with the enforcement of each guiding right analyse how legal provisions introduce tools for Victims to execute those four rights. The way in which the law assists in forming an independent, transparent, and well-trained judicial system is also analysed in this chapter. Procedural and administrative aspects are relevant for these sub-sections because they introduce procedural legal provisions that can lead to enforcement (e.g. avoiding unnecessary delays, coping with high costs, and introducing alternative dispute resolution mechanisms). Lastly, this chapter examines the ways available for Victims to enforce their right to communicate with the state and to participate in the policy process.

A change in paradigm can be perceived with the adoption of tailor-made ways of enforcement, together with the introduction of tools that assist judges in that purpose. For example, recent legal provisions to enforce the right to access to justice are adjusted to the dynamics of the problem of violence. The quality of providers may increase in domestic violence cases with the availability of further legal options (e.g. different preventive measures, external programmes, and mediations).

The dynamic relation between the people and the state is examined within the sub-sections that deal with enforcement. This dynamic can be exemplified by the overarching principle of the right of the people to petition the authority and to obtain a response from the authority, and by the right of citizens to elect and to be elected. Therefore, mechanisms to hold authorities accountable for their actions or omissions are studied in this chapter. It is perceived that mechanisms introduced by legal provisions are not easy to use by people without resources (monetary and legal). Mechanisms for transparency and accountability are also considered necessary by legal provisions to enforce the right to democratic participation (e.g. impeachments). The legal provisions studied in this chapter show timid attempts to democratize the judicial system (e.g. gender quota laws). Those attempts, within the LE framework, are needed for a democratized enforcement. An increase in these types of legal provisions may contribute to a more representative judicial system.

Parties are perceived as gaining relevance in the search for enforceable remedies. Legal provisions highlight the importance of having a judicial system informed and trained to handle the specificities of each problem (e.g. gender violence cases). The quality of the response by the judicial system serves an individual and a social purpose. On the one hand, the individual purpose relates to experiencing a judicial system that is able to assist people in the search for remedies and that is able to enforce those remedies. On the other hand, the social purpose serves a preventive role. As perceived from the legal provisions considered in this chapter, the enforcement of decisions granted by judges and legal provisions are related to the way the state performs, mainly through the judicial system and the police. Legal provisions studied in this chapter show that the City, differently from other jurisdictions, does not offer extensive strategies for people to gain control or tools to enforce rights.

Internal regulations and tailor-made laws emphasize strategies to protect Victims when claiming rights, avoiding re-victimization (e.g. unnecessary delays, questioning Victims twice on the same matter). The protection of Victims also includes strategies to stimulate their sustainable participation in the process, without termination of the process and therefore leaving problems unsolved. Some detrimental consequences can be triggered when problems remain unsolved even after an attempt by Victims and the judicial system to reach a solution. For example, it is detrimental for: (i) Victims, because they persist in the problem of violence, and create grounds for distrust and excuses to avoid the judicial system on further occasions; (ii) society, because of the image people might create of the judicial system as an institution incapable of enforcing rights; and (iii) the judicial system, because of the resources used to cope with the problem the first time it is presented by Victims, and the potential to have these Victims activate all resources once more, after first attempts fail. However, and more importantly and intrinsically related to the duties of the judicial system, it represents a failure to comply with the reason for its existence in a democratic structure.

This chapter examines the legal provisions that can serve to legally empower Victims. Chapter 4 of this study uses the experience of providers as the main source of data and intends to understand how access to justice legally empowers Victims from the view of providers. Therefore, the unit of analysis in the next chapter changes from legal provisions to Legal Organizations. The PPO is the Legal Organization studied in chapter 4 as applied to the LE framework. Chapter 4 provides insights into motivations and strategies used by providers to design the PPO and it likewise provides insights into how providers perceive the Legal Organization as a way to assist Victims in obtaining access to justice, resolving their conflicts on domestic violence, and heeding the needs of Victims when designing policies.





## Chapter 4

### Legal Empowerment as Applied to Legal Organizations

#### 4.1. Introduction

The previous chapter presented the legal provisions that contribute to legal empowerment (LE) of Victims, while this chapter presents Legal Organizations as tools to assist Victims in exercising rights. This chapter contributes to understanding the main research question of this study (i.e. how access to justice legally empowers Victims), because it analyses how providers who work at the Public Prosecutor's Office of the City (PPO) perceive elements that contribute to access to justice and LE. The analysis focuses on the organizational strategies that may contribute to legally empower Victims by improving access to justice, conflict resolution, and democratic participation. This study does not focus on assessing the quality of the Legal Organizations nor the service they provide beyond the above-mentioned aspects. In addition, it does not examine the motivation of providers as regards performance, nor bureaucratic efficiency.

The literature on LE mostly examines state organizations and NGOs that incorporate an aims-oriented intervention to legally empower a targeted population.<sup>1</sup> The capacity of NGOs to legally empower vulnerable groups is highlighted due to the value orientation<sup>2</sup> and the capacity to cope with an “unsatisfied demand for social and public goods.”<sup>3</sup> This study, however, focuses on Legal Organizations and considers the state as an agent able to deliver LE strategies due to the disposition of resources and social responsibility. The PPO is the Legal Organization selected for the study with the power to hear and decide on conflicts.<sup>4</sup>

Organizations are defined as groups of people working for a purpose, encompassing a “collective effort” towards a goal.<sup>5</sup> They therefore attract different employees and different users.<sup>6</sup> Organizations are considered a “central feature of all societies.”<sup>7</sup> LE includes, within its definition, the intervention component of organizations that aim at “increasing the capacity of people to exercise their rights and to participate in processes of governing.”<sup>8</sup> Motivations and strategies to achieve goals are normally addressed in the literature of organizations though this study does not analyse all aspects of organizations but considers, on the one hand, organizations as a means to

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<sup>1</sup> Goodwin and Maru, “What Do We Know about Legal Empowerment? Mapping the Evidence,” 3.

<sup>2</sup> e.g. Golub and IDLO, *Legal Empowerment: Practitioner's Perspectives*; for a theoretical approach to NGOs, including definitions and comparisons between NGOs and state and non-state organizations, see Anheier, *Nonprofit Organizations*.

<sup>3</sup> Cicoria, *Nonprofit Organizations Facing Competition*, 26.

<sup>4</sup> Congreso General Constituyente, *Constitución Argentina*, arts 116–117; Convención Constituyente, *Constitución de la Ciudad*, arts 106–110.

<sup>5</sup> Child, *Organization*, 3–16; Giddens, *Sociology*, 783.

<sup>6</sup> Child, *Organization*, 12.

<sup>7</sup> Giddens, *Sociology*, 783.

<sup>8</sup> Goodwin and Maru, “What Do We Know about Legal Empowerment? Mapping the Evidence,” 50.

an end, the law being the means and the organization the end, and, on the other hand, organizations as a process, given by their autonomy to function.<sup>9</sup>

This study, as explained in chapter 2, places providers working at the PPO in three groups of guiding actors: key civil servants, justice providers, and service providers.<sup>10</sup> Guiding actors represent different activities performed by the PPO and all of them have the capacity to influence the LE of Victims.

The following sub-sections of this chapter apply the LE framework to the three groups of guiding actors at the PPO. Guiding actors are presented above (2.1.2.2.) and are analysed in this chapter. Before analysing the three guiding actors, the study provides an overview of the PPO to contextualize the succeeding sub-sections (4.2.). The chapter then analyses the three guiding actors within the LE framework, starting by addressing key civil servants, due to the role they have in the design of the PPO (4.3.). Later, the chapter addresses justice providers, considering them important actors in assisting Victims in exercising their right to a remedy (4.4.). Service providers are analysed afterwards in order to understand the perceptions of actors who assist Victims on a daily basis (4.5.). Partial observations follow each guiding actor discussion, and concluding observations for the chapter are provided in the order of the LE framework to provide comprehensive remarks on the three guiding actors (4.6.).

## 4.2. Overview of the PPO

### 4.2.1. Location to Deliver Service

During the last decade the City experienced an increase in the number of Legal Organizations that assist people.<sup>11</sup> For example, the following Legal Organizations were created to assist Victims: PPO, Domestic Violence Office (OVD), and the Access to Justice Offices (*Centros de Acceso a Justicia*).<sup>12</sup> The creation of these Legal Organizations, together with the recent developments in legal provisions examined in chapter 3, offer people new options to demand rights beyond the traditional forums (i.e. courts).

The PPO serves the City, which has an urban population of 2,891,082 inhabitants.<sup>13</sup> The City has the characteristics of any big metropolis: a large number of inhabitants

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<sup>9</sup> For a note on flexibility within organizations, see Child, *Organization*, 7–9.

<sup>10</sup> Interviews with guiding actors are abbreviated in footnotes using the following criteria: (i) Key Civil Servants: KCS [number to identify the interviewee]; (ii) Justice Providers: JP [number to identify the interviewee] + [gender] + [role within the judicial system]; (iii) Service Providers: SP [number to identify the interviewee] + [profession] + “Free Interview” (only for the few interviews that did not follow the online interview format, as explained in chapter 2 of this study).

<sup>11</sup> For a study on how Legal Organizations can improve accessibility to rights, see UN General Assembly, “Legal Empowerment of the Poor and Eradication of Poverty.”

<sup>12</sup> Ministerio de Justicia y Derechos Humanos, “Centros de Acceso a Justicia.”

<sup>13</sup> INDEC, “Cuadro P5-P. Ciudad Autónoma de Buenos Aires. Población total por país de nacimiento, según sexo y grupo de edad. Año 2010.”

and a large number of problems.<sup>14</sup> Many problems in Argentina occur within the City and many of the innovative ideas towards coping with problems also come from the City.

The City is divided into 15 districts, and has a population density of more than 15,000 inhabitants per square kilometre.<sup>15</sup> The Gross State Product equals one-fourth of the Argentine GDP,<sup>16</sup> though almost one-third of the population lives below the poverty line (i.e. inhabitants who cannot cover Basic Needs, *Canasta Básica Familiar*).<sup>17</sup> Gender-wise, the population is evenly distributed, with 7 per cent more women than men.<sup>18</sup> There is still a difference between men and women heads of household because there are one-third more men heads of household compared to women.<sup>19</sup>

The City attracts a high number of immigrants and there is a large cultural diversity. Thirteen per cent of the population living in the City are immigrants (i.e. born in a country other than Argentina).<sup>20</sup> Most immigrants come from neighbouring countries, such as Peru, Bolivia, and Paraguay.<sup>21</sup> In relation to school attendance, 98 per cent of the population aged 5 to 17 attend school, and more than half of those attend private schools (56.48 per cent of the 2,725 schools functioning in the City are private).<sup>22</sup> The number of private educational institutions increases at the university level, with 29 out of 35 universities being private. Among students who start school, approximately 25 per cent at the age of 19 do not finish secondary school.<sup>23</sup>

More than half of the population is under working-age,<sup>24</sup> and the unemployment rate approximates 6 per cent.<sup>25</sup> In relation to health, 17.6 per cent of the population relies

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<sup>14</sup> Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013,” 5.

<sup>15</sup> Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013”; for updated statistics on socio-economic indicators of the City (e.g. consumption level of daily goods, inflation, child mortality), see Buenos Aires Ciudad, “Buenos Aires Ciudad - Estadística.”

<sup>16</sup> The GSP equals 327 billion pesos, see Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013,” 11.

<sup>17</sup> For information on the criteria used to identify whether inhabitants are poor, see Gasparini, “Poverty and Inequality in Argentina: Methodological Issues and a Literature Review,” 15; for updated reports and statistics on social indicators of the City, see Unidad de Información, Monitoreo y Evaluación. Ministerio de Desarrollo Social, “Diagnóstico de la situación social Ciudad de Buenos Aires”; infobae, “Casi El 30% de los porteños vive por debajo de la línea de pobreza”; Clarín, “Hay 860.000 porteños que viven por debajo de la línea de pobreza.”

<sup>18</sup> INDEC, “Cuadro P5-P. Ciudad Autónoma de Buenos Aires. Población total por país de nacimiento, según sexo y grupo de edad. Año 2010.”

<sup>19</sup> 148 men for every 100 women are head of the household, see Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013,” 7.

<sup>20</sup> INDEC, “Cuadro P5-P. Ciudad Autónoma de Buenos Aires. Población total por país de nacimiento, según sexo y grupo de edad. Año 2010.”

<sup>21</sup> Cerrutti, “Diagnóstico de las poblaciones de inmigrantes en la argentina.”

<sup>22</sup> Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013,” 5.

<sup>23</sup> Unidad de Información, Monitoreo y Evaluación. Ministerio de Desarrollo Social, “Diagnóstico de la situación social Ciudad de Buenos Aires.”

<sup>24</sup> BOP Consulting, “World Cities Culture Forum.”

<sup>25</sup> Buenos Aires Ciudad, “Buenos Aires en números, última actualización 23.10.2013,” 13.

entirely on public health, 82.4 per cent is associated with some sort of health care,<sup>26</sup> and almost 16 per cent does not have any health care.<sup>27</sup> Cultural activities abound in the City and many establishments, such as museums and libraries, depend on the City.<sup>28</sup> Green areas are scarce in the City. Only 9.5 per cent of the surface area of the City can be categorized as green areas.<sup>29</sup>

#### 4.2.2. Composition of the PPO

Legal provisions that created and delimited the structure of the PPO have been analysed in chapter 3, though references to legal provisions are also made in this chapter when needed. This chapter, conversely, focuses on the dynamics of the PPO. This study does not intend to understand the rational model of the PPO but rather the decisions made by key civil servants to design the PPO and the way justice providers and service providers perceive that design as beneficial for Victims.

The PPO is one of the three Legal Organizations of the City Attorney General's Office (City Attorney, i.e. PPO, City Public Defender, and the City Advisor for Disabled People). The heads of the three Legal Organizations of the City Attorney stay in power for seven years and can be re-elected after a one-year interval.<sup>30</sup> The selection process, as demanded by the City Constitution, requires that the City Council of Magistrates proposes candidates and the City House of Deputies votes upon those proposals. Candidates need to obtain an absolute majority from the City House of Deputies in order to be elected.<sup>31</sup> The PPO, City Public Defender, and City Advisor for Disabled People exercise their activities before the City Tribunal.<sup>32</sup> As mentioned in chapter 3, the City Attorney has functional autonomy and autarky within the judicial system.<sup>33</sup> The functional autonomy enables the creation of provisions to regulate the internal organization and operation. The functional autarky allows the PPO to adopt provisions such as internal regulations and acts of administrative or financial characteristics.<sup>34</sup> The scope of the PPO may increase the geographical and cultural connection with the people, allowing for the promotion of justice in defence

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<sup>26</sup> 50.8% of the population has health insurance, 17% has pre-paid medical plans, and 9% has pre-paid voluntary medical plans, while the remaining population has some type of emergency medical plan or mutuals (medical plans that do not have state assistance), *ibid.*, 8.

<sup>27</sup> Unidad de Información, Monitoreo y Evaluación. Ministerio de Desarrollo Social, "Diagnóstico de la situación social Ciudad de Buenos Aires."

<sup>28</sup> Buenos Aires Ciudad, "Buenos Aires en números, última actualización 23.10.2013," 6; BOP Consulting, "World Cities Culture Forum."

<sup>29</sup> The green areas in the City are small, if compared with other cities that have almost 50% green areas (e.g. Curitiba, Vienna) or have almost 16% (e.g. Berlin, Los Angeles, Munich, San Francisco), BOP Consulting, "World Cities Culture Forum"; Buenos Aires Ciudad, "Buenos Aires en números, última actualización 23.10.2013," 7.

<sup>30</sup> Convención Constituyente, *Constitución de la Ciudad*, art 126.

<sup>31</sup> *Ibid.*, arts 118 and 126.

<sup>32</sup> *Ibid.*, art 124.

<sup>33</sup> *Ibid.*, art 124.

<sup>34</sup> Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 354–55.

of the legality of the social interest.<sup>35</sup> The ultimate goal of the PPO is to be a “helper” for the judicial system and to satisfy the social interest.<sup>36</sup>

The table below presents the connection amongst guiding actors at the PPO, and between guiding actors from the City Tribunals and the City Council of Magistrates who work together with guiding actors at the PPO to assist Victims.

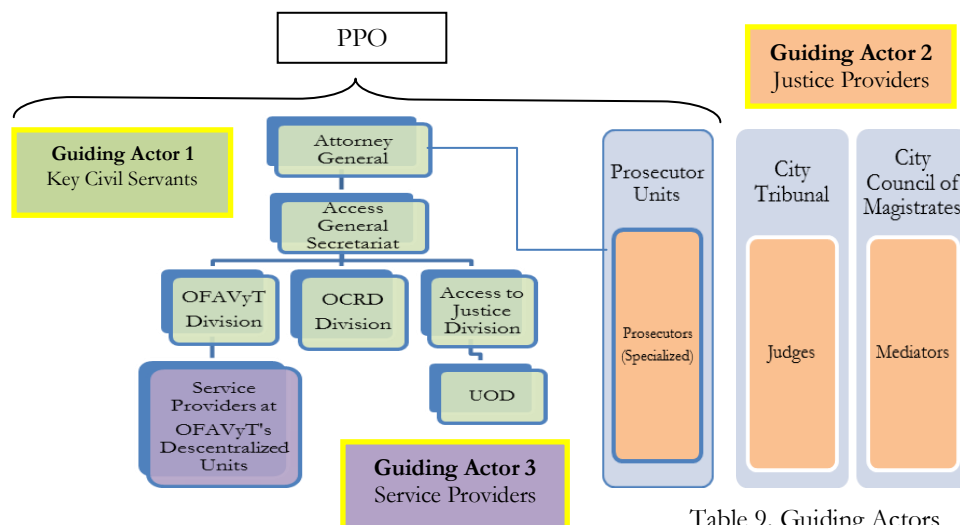


Table 9. Guiding Actors

### 4.3. Key Civil Servants

This section examines data collected from key civil servants within the PPO and its Access General Secretariats (Table 9). Key civil servants are perceived as having an involvement with the law and the judicial system that exceeds their activities at the PPO. On the one hand, key civil servants know the dynamics of the judicial system given the fact that most built their professional career in the judicial system and they express clear objectives and goals they want the PPO to achieve. On the other hand, most key civil servants admit either to being involved in NGOs so as to improve the design of the judicial system and the delivery of justice or to teaching at universities.

#### 4.3.1. Rights Enhancement

This sub-section on rights enhancement studies the organizational developments on access to justice, conflict resolution, and democratic participation implemented by key civil servants during 2007 through 2014. The analysis of data reveals that the following elements are important for the organizational development: recent legal provisions (4.3.1.1.), the transition faced by the PPO when starting to operationalize the assistance (4.3.1.2.), the personal characteristics of the head of the PPO (4.3.1.3.), the context under which the PPO performs its activities (4.3.1.4.), the way in which key

<sup>35</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*, art 125.

<sup>36</sup> Ibid., art 125(2); Quiroga Lavié, *Constitución de la Ciudad Autónoma de Buenos Aires comentada*, 335–56.

civil servants communicate within the PPO and with other organizations (4.3.1.5.), the way in which key civil servants approach providers (4.3.1.6.) and the people (4.3.1.7.), the limitations to achieving objectives (4.3.1.8.), and the sustainability of those objectives (4.3.1.9.).

#### *4.3.1.1. Legal Provisions*

Key civil servants consider the recent developments in legal provisions to design the PPO relevant, especially those brought by the Code of Criminal Procedure for the City (CCPC). Special importance is given to legal provisions dealing with procedural aspects, because they offer concrete guidelines as to design and performance.<sup>37</sup> Legal provisions dealing with substance are not viewed as helpful because they do not provide concrete directions.

The CCPC is considered relevant in the design of the PPO because it introduces: aspects of the adversarial system, criminal mediation as an option for alternative dispute resolution mechanisms, guidelines on how to consider the role of victims in the process, and relevance in social satisfaction.<sup>38</sup> The Brasilia Regulation is mentioned as complementing the CCPC with the definitions on vulnerable groups and recommendations on how to assist them.

Law 26485 is considered relevant only when providing legal provisions that assist in the operationalization of public policies. Single definitions in legal provisions are viewed as incomplete legal provisions because they lack clear directions for execution.<sup>39</sup> Not including legal provisions that help to operationalize may also leave ample space for discretion. For example, Law 26485 article 9(m) states that the National Council of Women is in charge of periodically analysing statistics and publishing results to monitor and adjust public policies. Executive order 1011 regulates article 9(m) and states that the National Council of Women has to secure precautions so as to facilitate the coordination of the judicial system with the PPO (national and local).

Key civil servants criticize this article because it does not state how the National Council of Women is to materialize the task and what type of elements are needed in order to succeed in achieving the final goal (e.g. a comprehensive method of data collection connecting the judicial system and the PPO). As a result of legal provisions that do not help to operationalize, key civil servants mention that even when the Victims and Witness Assistance Office (OFAVyT) handles a large number of domestic violence cases per month, those numbers are not counted by a national or City system. Hence, the law fails in ensuring a successful implementation of a comprehensive collection and analysis of data by giving concrete directions for the operationalization. The risk of not including legal provisions that help to operationalize is the high discretionary power left to coordinators that may lead to, as

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<sup>37</sup> e.g. CCPC, internal regulations, procedure manuals of each division of the Access General Secretariat; KCS, 001; KCS, 004; KCS, 005.

<sup>38</sup> KCS, 001; KCS, 002; KCS, 005; KCS, 006.

<sup>39</sup> KCS, 001.

perceived from the example, the exclusion of some state organizations. Consequently, it can be viewed as policy retrogression, because the law misused the opportunity given to gender violence when it reached the policy agenda.

Interviewees mention other examples.<sup>40</sup> Accordingly, Law 26485 article 37 and the way it addresses the socio-demographic registry of cases of violence based on gender is mentioned. The law assigns to the Argentine Supreme Court the task of registering socio-demographic data of victims of gender violence. The executive order to that law does not regulate article 37. The lack of regulation results in a non-uniform way of collecting this information by different state organizations with the capacity to do so and therefore prevents the possibility of a homogeneous national data set. Key civil servants express the feeling of being left isolated in the initiatives addressed by article 9(m) and article 37 on collection of data, even after attempting unsuccessfully to approach the state organizations as assigned by the law. Consequently, Argentina still has no harmonized data collection system.<sup>41</sup>

Key civil servants state that Latin America frequently faces a particular problem: the law changes but the Legal Organizations remain unchanged. Key civil servants mention that being aware of this problem helps them emphasize the value of legal provisions when designing the PPO.<sup>42</sup>

The importance of legal provisions for the performance of Legal Organizations should be noted. The more legal provisions offer state organizations concrete tools to perform their functions, the more key civil servants can act upon them.

#### 4.3.1.2. Transition

Key civil servants mention that in 2007 they encountered a very precarious Legal Organization.<sup>43</sup> The PPO had experienced, before 2007, consecutive attorney's general undertaking interim mandates, and the use of the commonly denominated "patch law" (*ley parche*).<sup>44</sup> The patch law temporarily allowed the PPO to operate, while waiting for the enactment of the CCPC. The patch law contained aspects of the Argentine Code of Criminal Procedure that were compatible with the adversarial system incorporated in the CCPC. In 2007, the first non-temporary attorney general

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<sup>40</sup> Ibid.

<sup>41</sup> On the performance of an NGO collecting statistics on women killed by their partners, see La Nación, "Femicidios."

<sup>42</sup> KCS, 005.

<sup>43</sup> Ibid.; KCS, 001.

<sup>44</sup> The City, as mentioned before, gained autonomy in 1994. From 1994 until the present developments in legal provisions occurred to build the judicial capacity of the City and its ground for action. Patch law refers to those laws that were enacted during the transition period of the City (i.e. before the enactment of the Contravention Code of 2004 and the CCPC in 2007). Crimes and contraventions are still progressively transferred from the Nation to the City, see Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Procesal Penal de la Ciudad Autónoma de Buenos Aires*; Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*; Congreso de la Nación Argentina, *Convenio de Transferencia Progresiva de Competencias Penales de la Justicia Nacional al Poder Judicial de la Ciudad Autónoma de Buenos Aires*, 2003; Congreso de la Nación Argentina, *Convenio de Transferencia Progresiva de Competencias Penales de la Justicia Nacional al Poder Judicial de la Ciudad Autónoma de Buenos Aires*, 2008.



took office and the CCPC was adopted. The attorney general started with clear mandate objectives, and the CCPC incorporated new procedural elements. Moreover, crimes and contraventions started to be progressively transferred from federal to City justice.

Key civil servants view the progressive transfer of crimes and contraventions as an advantage.<sup>45</sup> The reduced number of crimes and contraventions with which the PPO started operating gave them the possibility to focus on a reduced number of illicit behaviours. Techniques to improve access to justice were fundamental for the design of the PPO and key civil servants could afford to implement pilot projects.<sup>46</sup> As explained by two key civil servants:

*We had the privilege of generating certain [organizational] structures also because the transfer of jurisdictions was progressive. This allowed us to develop certain paths with minor conflicts and with low level of conflict and we then started to absorb more work, yet over a structure that we could already test ... with a reduced amount of work.*<sup>47</sup>

*New conflicts appear progressively, and teams can start to warm-up ... in advance to see how we will anticipate these new conflicts. And that continues to be a comparative advantage.*<sup>48</sup>

The progressive transfer of crimes and contraventions also placed the PPO in a situation of constant transition that requires regular adjustments. This is mentioned as a minor disadvantage for the development of the PPO.<sup>49</sup>

#### 4.3.1.3. Personification

Most key civil servants mention the appointment of the new attorney general in 2007 as a key factor in the design of the PPO.<sup>50</sup> The person of the attorney general is viewed as someone with concrete ideas on how to design a Legal Organization that considers the socio-demographic characteristics of people. Most key civil servants value the strategy implemented towards access to justice, conflict resolution, protection and the role given to victims during the process, and use of technology to improve internal and external coordination and communication. Moreover, the PPO is viewed as differing from other Legal Organizations due to the emphasis that the attorney general gave to *management, statistics, numbers, and data analysis*.<sup>51</sup> As highlighted by an interviewee, with the appointment of the new attorney general *it [was] the first time that a formal and real change of management occurred*.<sup>52</sup>

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<sup>45</sup> KCS, 001; KCS, 001.1; KCS, 005; Assistant to KCS 001, 001.

<sup>46</sup> KCS, 004; KCS, 005.

<sup>47</sup> KCS, 001.

<sup>48</sup> KCS, 006.

<sup>49</sup> KCS, 001.

<sup>50</sup> Ibid.; KCS, 002; KCS, 003; KCS, 004.

<sup>51</sup> KCS, 001.

<sup>52</sup> Ibid.

Personification of Legal Organizations, however, may be detrimental in the long term, affecting continuity or sustainability. Already during the last research stays for this study, key civil servants, service providers, and justice providers raised uncertainty about the shift that the PPO will experience with the change of attorney general. Organizational policies on structural design are meant to survive managers and there is a risk concerning the survival of the structure if Legal Organizations create manager dependency.

#### 4.3.1.4. Context

Key civil servants say that the characteristics of the City were considered when designing the PPO.<sup>53</sup> The number of people per square kilometre determines the physical proximity that the PPO could have with the people, and the number of crimes and contraventions occurring under each jurisdiction.<sup>54</sup> Furthermore, people of different socio-economic classes agglomerate in different areas of the City, resulting in a differentiation as to the type of cases and demands received in each of the decentralized prosecutor units.<sup>55</sup> Elements, such as access to telephones, access to the Internet, and nearness to public services are mentioned as being common to all areas of the City.<sup>56</sup> Key civil servants mention that these characteristics, together with the budget available for the PPO, make the structure of the PPO difficult to replicate in other jurisdictions. In the words of a key civil servant:

*We are currently working with a super successful thing, which to our knowledge we are the only ones doing this in the world, according to 'Google.' This is a very central topic ... and we still do not have much information. However, the limited information we have, shows that given the high level of Internet penetration in the population, almost without social, cultural, or economic barriers, it still penetrates throughout the entire City. We are developing software that identifies keywords, and when people run a search [on the Internet] they find the PPO as a provider of service.<sup>57</sup>*

Legal Organizations provide a service to the people. Understanding the socio-demographic characteristics of the population is an important element in order to begin introducing techniques that may serve to legally empower people.

#### 4.3.1.5. Communication

##### 4.3.1.5.1. Internal Communication

Key civil servants also consider it important to hear the opinions of prosecutors every time they implement or re-design programmes.<sup>58</sup> Communication is performed through personal meetings for that purpose. Moreover, the PPO implements

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<sup>53</sup> Ibid.; KCS, 005.

<sup>54</sup> KCS, 001; KCS, 005.

<sup>55</sup> KCS, 001.1; KCS, 001.3.

<sup>56</sup> KCS, 005.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

information systems management to foster the communication at the PPO. KIWI, a judicial information systems management system, was created to serve internal communication. KIWI started to operate in June 2012 and was added to the existing information systems management office of the PPO. JusCABA is another information systems management system used by the judicial system and the PPO. Currently, both systems are jointly operating: KIWI for preliminary investigation activities and JusCABA for court intervention stages. Key civil servants mention that while internal communication now flows smoothly, there is still room for improving external communication. Smooth internal communication is still beneficial for the delivery of assistance considering that 20 per cent of cases that enter the PPO never reach trial.<sup>59</sup> Communication with other Legal Organizations still needs to improve, and key civil servants mention that the reason for non-improvement lies in the fact that there is *an organizational fight to see who owns the information, who shares it, and who does not*.<sup>60</sup>

Communication and coordinated work with different organizations (e.g. the executive and churches)<sup>61</sup> is perceived as important for the delivery of assistance.<sup>62</sup> Coordination efforts with other organizations continue to be bureaucratic and precarious, and key civil servants consider that this reduces their potential for the delivery of assistance.<sup>63</sup>

Communication with pro bono attorneys occurs in the form of referrals and is mostly performed when cases demand a civil action.<sup>64</sup> However, communication is viewed to flow more extensively within state organizations that work with domestic violence cases. For example, key civil servants say that OFAVyT communicates with OVD and the National Council of Women, though many times it is difficult to arrive at consensus.<sup>65</sup> The lack of consensus is reflected in the lack of a unified system to collect data and the development of a uniform form to allow referrals without demanding a second interview from Victims. As explained by key civil servants, OFAVyT works with the referrals sent by OVD (on the criminal aspect of complaints) and relies on the information provided, yet not the other way around. Therefore, a new interview is completed when OFAVyT refers a Victim to OVD. The lack of cooperation seems to derive from the lack of willingness on the part of state organizations to discuss ways in which to reach consensus, and therefore it is considered an organizational barrier rather than a substantial barrier. Coordination with shelters to assist Victims also exists.<sup>66</sup> However, key civil servants are reluctant to refer Victims to shelters, considering this as a way of re-victimization. Shelters are then used only under very exceptional circumstances.

The PPO emphasizes electronic communication between the secretariats and prosecutor units. All efforts seem to aim at the development of a system with limited

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<sup>59</sup> KCS, 001.

<sup>60</sup> Ibid.

<sup>61</sup> e.g. Buenos Aires Ciudad, “Secretaría de Hábitat e Inclusión.”

<sup>62</sup> KCS, 003.

<sup>63</sup> e.g. organizations mentioned include the federal or City executive and courts, KCS, 001.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> KCS, 001.2.

dependency on additional personnel and flow of paper documentation, yet hierarchically centred in prosecutors. Most actions by PPO require the intervention of prosecutors, and therefore, every effort to achieve a better communication flow between service providers (especially with those working at access point units) and prosecutors will ultimately accelerate the delivery of assistance.<sup>67</sup> This internal strategy seems not to be implemented in communications between the PPO and other state organizations. For example, the Reception of Complaints Office, receiving complaints by telephone and the Internet, communicates with state organizations mainly through written communications. Units of Orientation and Complaints (UODs) also receive hard-copies of their risk assessment of Victims from OVD.

#### 4.3.1.5.2. External Communication

The PPO communicates with an extensive network. Key civil servants have constructive communication with countries of the region (e.g. Chile, Colombia, and Costa Rica). Their experiences, positive and negative, inspire strategies.<sup>68</sup> For example, the structure of adopting a Unit of Early Intervention is inspired by the Colombian Units of Immediate Answers.<sup>69</sup> Increasing the assistance for Victims is triggered by reflecting upon the lack of assistance for Victims in the region,<sup>70</sup> and it is also inspired by the Orientation, Protection and Support Programme<sup>71</sup> that is part of the Chilean Public Prosecutor's Office to assist and guide victims and witnesses.<sup>72</sup> Key civil servants say that if the demand for OFAVyT continues growing they might need to narrow their intervention, similar to the Legal Organization in Chile. Moreover, the strategy to assist Victims implemented by the PPO is viewed as a source of inspiration for other jurisdictions in the region.<sup>73</sup> This reveals communication between jurisdictions across the region.

Key civil servants, however, are reluctant to transplant Legal Organizations because of the social characteristics of each served community. As one key civil servant states:

*There is an issue that is central to this: the different expectations of people. That is to say, when the expectations or demands ... defer, one has to organize its structure based on that demand, [and] not 'because in Spain or in France was done in such a way.' Unfortunately in most countries of the region we had a lot of that, and particularly in Argentina. Copying organizations from other countries, because we very much like the organizations, without looking what inhabitants are claiming or needing. Then, somehow, the axis of our work was to work on these demands of the population.<sup>74</sup>*

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<sup>67</sup> KCS, 004.

<sup>68</sup> KCS, 003; KCS, 005.

<sup>69</sup> For additional information on the Colombia Public Prosecutor's Office, see Fiscalía General de la Nación. Colombia, "Centros de Atención Ciudadana."

<sup>70</sup> KCS, 005.

<sup>71</sup> The Chilean programme is narrowed to vulnerable groups, see Fiscalía Ministerio Público Chile, "Orientación, Protección y Apoyo (OPA)."

<sup>72</sup> KCS, 001.3.

<sup>73</sup> KCS, 005.

<sup>74</sup> Ibid.

A critical observation is therefore suggested by key civil servants when considering strategies implemented by other jurisdictions.<sup>75</sup> Chile, Colombia, and Costa Rica, and the Argentine province of Córdoba, are pointed out as the “observed” jurisdictions, since they incorporated criminal procedural reforms some time before the City. Experiences from other regions are mentioned, but less frequently, such as the case of Florida (US), and their Victims Service Center.<sup>76</sup> Communication takes place when dealing with strategies towards access to justice with Brazil (Río de Janeiro), Colombia, Costa Rica (especially the design towards elderly assistance), Panama, and Puerto Rico. Communication takes place when dealing with gender topics mostly with Spain and the US (Baltimore).

Communication with international organizations—ILANUD,<sup>77</sup> the Inter-American Court of Human Rights,<sup>78</sup> and Eurosocial Justice—also exists, though limited to research cooperation.<sup>79</sup> Cooperation with universities, mostly private, exists through internship agreements between the PPO and students.<sup>80</sup>

#### 4.3.1.6. *Approach to Providers*

The PPO intends to change the way of delivering service to engage the trust of people towards the judicial system.<sup>81</sup> The first response from providers towards the implemented structure of the PPO was positive, and key civil servants perceived an enthusiastic atmosphere amongst justice providers and service providers. That enthusiasm is perceived as having a contagious effect in other dependencies of the judicial system, such as courts and public defenders. Yet, key civil servants say keeping that original enthusiasm is one of the main challenges and constraints to improving the assistance provided.<sup>82</sup>

Key civil servants explain that in order to improve the assistance given by providers, training is conducted when providers start working at the PPO and throughout the year. Training is provided on the standardized procedure when providers start working at the PPO.<sup>83</sup> Specific training during the year is provided on new developments (e.g. KIWI) and on requests for particular improvements (e.g. training providers to accurately collect information that facilitates the task of prosecutors).

Access point units are also mentioned to receive special attention. These units have two groups of employees, those who receive people and those who draft complains.

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<sup>75</sup> Ibid.

<sup>76</sup> Victim Service Center of Central Florida, “Crime Victim & Trauma.”

<sup>77</sup> KCS, 001; KCS, 003; ILANUD, “Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente.”

<sup>78</sup> Corte Interamericana de Derechos Humanos and Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “Diálogo. El impacto del sistema interamericano en el ordenamiento interno de los estados.”

<sup>79</sup> KCS, 003.

<sup>80</sup> KCS, 002.

<sup>81</sup> KCS, 001; KCS, 005; KCS, 006.

<sup>82</sup> KCS, 005; KCS, 006.

<sup>83</sup> KCS, 001; KCS, 002; KCS, 003.

For the first group, the “sympathy” and way of communicating with people is mentioned as more important than legal knowledge.<sup>84</sup> Key civil servants state that during the first part of the conversation with people, providers act merely as listeners, allowing people to release stress and anxiety, and only afterwards do providers start working on complaints or referrals. In general, key civil servants agree that most people who contact the PPO are stressed and anxious. The stress and anxiety transmitted by people requires special skills and support for providers, and some interviewees argue that these employments need to be temporary so as to preserve the mental health of providers and the quality of assistance.<sup>85</sup> Yet, key civil servants state that providers work at those positions an average of seven years, while ideally, in their view, they should be working one or two years and then rotate. A justice provider specialized in gender issues agrees and states that this component becomes a higher challenge when providers deal daily with violence.<sup>86</sup> For example, an interviewee states that one of the biggest challenges that OVD faces is the tiredness of providers, which results in a decrease of sensitivity on gender violence cases, and again in a decrease in the quality of assistance.<sup>87</sup>

#### 4.3.1.7. *Approach to People*

Key civil servants explain that people are one of the core considerations that motivate organizational changes at the PPO.<sup>88</sup> Therefore, the implementation of programmes often derives from a prior understanding of what people are actually demanding. OFAVyT, for example, was created after realizing that people arrived at the PPO *helpless, without knowing what they wanted, where to go, without orientation, and without help*.<sup>89</sup> Another example is found in the PPO and the Neighbours programme,<sup>90</sup> where meetings with neighbours are organized in order to understand legal needs and demands. These programmes offer a more genuine connection with neighbourhoods, strengthening a decentralized approach to reach different users.

Key civil servants associate the vulnerabilities of people who approach UODs to the neighbourhoods where they dwell.<sup>91</sup> For example, they explain that people living in neighbourhoods with a less educated and poorer population are considered more vulnerable with respect to access to public services. Decentralized units, such as UODs, and multidisciplinary assistance, such as that provided by OFAVyT, with a capacity to assist people to express their problems, are considered two strategies to *empower people to submit a complaint and to make use of their rights*.<sup>92</sup> However, service providers working for mobile units at emergency neighbourhoods believe that there is an overall stereotype about the needs of people of emergency neighbourhoods.

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<sup>84</sup> KCS, 002; KCS, 003; KCS, 004.

<sup>85</sup> KCS, 002.

<sup>86</sup> Female Judge & Specialist in Gender Issues, JP 012; OVD - KCS, 001.

<sup>87</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>88</sup> KCS, 001; KCS, 003; KCS, 004; KCS, 005; KCS, 006.

<sup>89</sup> KCS, 005.

<sup>90</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “La Fiscalía y los Vecinos.”

<sup>91</sup> KCS, 004.

<sup>92</sup> Ibid.

Customer-satisfaction surveys are offered to some people who are assisted by UODs, yet these surveys are not mandatory. The surveys are used as a way in which to understand how the assistance provided by UODs helps people.<sup>93</sup> Key civil servants conclude from the surveys that people leave the units with a happy feeling, due to the way they are received and assisted. Elements on quality of service are therefore measured by how “happy” people leave after they receive the service. Key civil servants aim to instil the routine in service providers of asking every person to complete a survey, but this is still not operating consistently.

Customer-satisfaction surveys are not extended to people of emergency neighbourhoods due to their lack of possibilities to comprehend questions such as, Did you feel well-served?<sup>94</sup> Key civil servants consider that asking questions of those who will encounter difficulties in understanding is a form of aggression. It should be noted that such a paternalistic approach, resulting from perceptions and stereotypes, can diminish the possibilities of adjusting policies to better respond to the needs of vulnerable groups.

#### 4.3.1.7.1. Type of Cases

Key civil servants indicate that the PPO receives approximately 50,000 cases per year.<sup>95</sup> OFAVyT intervenes in between 15 and 17 per cent of these cases, of which almost 70 per cent are domestic violence cases. Half of the domestic violence cases are referred by the OVD, one-third come from police stations, and less than 7 per cent come directly from the UOD or the Reception of Complaints Office (through the toll-free telephone number, e-mail, or website).<sup>96</sup> The contravention of harassment, falling under the definition of domestic violence, amounts to 7 per cent of the total complaints. In relation to crimes, almost one-third of the cases relate to threats (a crime that can also fall within the definition of domestic violence).<sup>97</sup> Complaints come mostly from individuals, while very few come from NGOs.<sup>98</sup>

There is limited information, however, on the age, level of education, and economic conditions of those who submit complaints, and only basic contact information is asked of each caller to allow for a return call. Additional information is not considered relevant for the purpose of the service provided, and inquiring about it is perceived as not beneficial because of the level of stress of most callers. Key civil servants state that children rarely call or approach the PPO.

The UODs, differently from the Central Recipient Unit for the Submission of Complaints, do not show a high demand. Key civil servants state that UODs respond to a strategy to facilitate the communication and the submission of complaints, and

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<sup>93</sup> Ibid.

<sup>94</sup> KCS, 003.

<sup>95</sup> KCS, 001.

<sup>96</sup> KCS, 002.

<sup>97</sup> Congreso de la Nación Argentina, *Código Procesal Penal de la Nación*, art 149bis, followed in a number by cases on abandonment and/or mistreatment of animals (Law 14346).

<sup>98</sup> KCS, 002.

that the success of this initiative is not measured in numbers, but in the potentiality of this alternative as a means to access to justice.<sup>99</sup>

#### 4.3.1.7.2. Strategies to Access to Justice

Access to justice has been present from early on in the policy agenda of key civil servants, and a policy priority during 2007-2014. The Access General Secretariat was created to coordinate divisions tackling channels of access to justice and assistance to people.<sup>100</sup> This secretariat is important in order to achieve the objectives of the PPO and receives the highest percentage of economic and human resources (approximately one-third of the PPO budget and a large percentage of providers).<sup>101</sup>

Key civil servants conceive access to justice in a broad sense and have their focus on improving ways to reach people with their legal options.<sup>102</sup> Moreover, access to justice is considered a necessary means to achieve the main elements introduced by the CCPC (i.e. conflict resolution, victims involved in the process, and attaining social satisfaction). As one key civil servant states:

*You could position yourself in the 'access to justice,' that is to say, from the moment that citizens access to perform their court petition ... . So your job is related to what happens from the front door of the building or from the place where the petition is made. But if you conceive access to justice as 'access to rights' then you look at the obligation to work in programmes that seek to minimize legal poverty. You do not care only after the moment that [the claim] enters, but [you also care] about the fact that [the claim] actually enters, [and therefore you care about the individual] having the capacity to enter.*<sup>103</sup>

Technology is mentioned as the main tool by which to simplify access to justice. Accordingly, the toll-free telephone number and the tool to submit e-complaints, via e-mail and the webpage, are viewed as improving access to the PPO.<sup>104</sup> E-access, with high demand and transparency at a lower cost, is considered as having the highest impact on people.<sup>105</sup>

Decentralization, as argued by key civil servants and scholars, understands the need to have the law nearer to the people, allowing for a higher probability of use of rights.<sup>106</sup> However, decentralizing the entire judicial system is viewed as an impossible task since judges would have to constantly move about. Two elements are mentioned as obstacles to decentralization: one relates to the chaotic distances that judges have to cover within the City, and the other relates to the cost of making available a physical

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<sup>99</sup> KCS, 003.

<sup>100</sup> KCS, 005.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.; KCS, 006; KCS, 003.

<sup>103</sup> KCS, 003.

<sup>104</sup> Revista Sistemas, "Sistemas Judiciales N° 16."

<sup>105</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, "Tecnología en el MPF CABA"; Revista Sistemas, "Sistemas Judiciales N° 16."

<sup>106</sup> KCS, 005; KCS, 003; the data collected on ways to improve access to justice find agreement with a number of scholars, see Lorenzetti, "Acceso a la justicia de los sectores vulnerables."



space to perform activities.<sup>107</sup> Therefore, within a realistic strategy, UODs, and not prosecutors or judges, become decentralized to act as the *extended arms of the PPO*.<sup>108</sup> Key civil servants consider that the operational capacity of UODs allows them to perform internal and external referrals.<sup>109</sup> An effective referral reduces the wandering of people around the judicial system and their possibilities to drop their complaints.

Prosecutor units were decentralized in each of the five districts of the City, following the idea that for a better access to justice, the law needs to get nearer to the people.<sup>110</sup> Prosecutor units have between five and eight prosecutors, and one of those prosecutors is specialized in gender violence, investigating only cases considered “high risk.” Each of these five decentralized prosecutor units has one Unit of Early Intervention that, amongst other things, allows for a first filter of cases. OFAVyT is located in each of these prosecutor units, while UODs are occasionally located within prosecutor units or in buildings within the same area.

The units (e.g. prosecutor units and the UODs) are, whenever possible, strategically located in places where key civil servants found groups more vulnerable with respect to access to justice.<sup>111</sup> Statistics are mentioned as helpful in designing strategies to reduce bureaucratic steps by, for example, increasing oral over written communication, and allocating efforts to inform people of their options. For this purpose, the PPO provides people with different access points to submit criminal complaints.<sup>112</sup> This first filter is made at the access points, preventing people from visiting inappropriate Legal Organizations. The access points introduced by key civil servants in this decentralized strategy are: (i) a toll-free telephone number, a webpage, and an e-mail address coordinated by the Reception of Complaints Office; and (ii) the UODs.

The toll-free telephone number is the first strategy by which to improve the channels of access to justice and has been operating since the City gained autonomy.<sup>113</sup> This option is believed by key civil servants to provide people with the possibility to easily submit complaints (or receive appropriate referrals) by dialling a telephone number from their homes, without having to go to the police station.<sup>114</sup> The service develops along with the incorporation of e-mail and webpage complaints; and therefore, technology becomes an important tool to access to justice.

UODs provide the other access point.<sup>115</sup> These are walk-in units that listen to cases brought by people. They provide orientation, when people do not face a judicial problem of their competence, and draft criminal complaints that are then forwarded

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<sup>107</sup> KCS, 003.

<sup>108</sup> Ibid.; KCS, 004.

<sup>109</sup> A document with referrals is available and the effectiveness of referrals is checked twice a month. Referral agreements to improve the process are signed by the courts (e.g. Court of Criminal Appeals).

<sup>110</sup> KCS, 002.

<sup>111</sup> Ibid.; KCS, 006.

<sup>112</sup> KCS, 001; KCS, 005; KCS, 003.

<sup>113</sup> KCS, 002.

<sup>114</sup> Ibid.

<sup>115</sup> KCS, 004.

to prosecutor units. UODs also have mobile units, which enter the emergency neighbourhoods considered to be socially and economically isolated and experiencing high criminality rates.<sup>116</sup> Key civil servants mention that before UODs and mobile units were established, a pilot project was implemented only in some districts.<sup>117</sup> This pilot project was made permanent and spread across the entire City. The success of the pilot project is assessed by its legitimacy (belief that these additional channels to access are needed to increase the opportunities of people to claim rights) and not by an input-output measurement (i.e. counting the number of people who approach units to seek assistance or to submit complaints, against the cost of having the service operating).<sup>118</sup>

Key civil servants mention, however, that one of the long-term challenges of the PPO is *to try to generate more empathy* within the population about the decentralized system.<sup>119</sup> Other pilot projects are also used when designing the specialized prosecutor units. The PPO started with one specialized prosecutor unit and then opened others.<sup>120</sup> However, from the interviews conducted in this study it cannot be assessed whether those pilot projects are a progressive implementation, or whether they are ways in which to assess the components of the pilot projects and then to adjust according to results.

The Unit of Early Intervention intervenes once people receive first assistance and complaints are taken or referred by access points to the prosecutor units.<sup>121</sup> This unit is a “filter” assessing whether: cases fall under the jurisdiction of the PPO, and whether there is enough evidence to proceed to trial. When there is not enough evidence, for example, the Unit of Early Intervention files away complaints and sometimes it can request mediation or perform a minor investigation, such as in disputes where cases can be resolved with simple telephone calls. This filter is meant to minimize the number of cases referred to prosecutors.

People might access the PPO using UODs. If a case falls under the jurisdiction of the PPO, people are immediately referred to lawyers from the PPO.<sup>122</sup> During the meetings with the lawyers, complaints are drafted and the lawyers explain their rights. The structure is built in such a way that people leave the UODs with their complaints assigned to a prosecutor unit which starts with the investigation. UODs mostly receive domestic violence cases that are referred by the OVD. It can be preliminarily observed that different types of problems use different access points to justice. This study does not investigate the reasons why that is the case, because it focuses on domestic violence. Analysing the type of problems of people and the places they turn to for

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<sup>116</sup> For recent strategies on access to justice in emergency neighbourhoods, see La Nación, “Un atajo hacia la justicia.”

<sup>117</sup> KCS, 001.

<sup>118</sup> KCS, 003.

<sup>119</sup> KCS, 005.

<sup>120</sup> KCS, 001.

<sup>121</sup> KCS, 002.

<sup>122</sup> KCS, 004.

assistance is relevant for policymaking, because it gives elements to adjust the means of access to justice.

Key civil servants mention two external access points where criminal complaints can be submitted and then referred to the PPO. Those are police stations and the OVD. Key civil servants communicate with both organizations to improve mechanisms of referral with external access points, expediting them, and using fewer resources.<sup>123</sup> Interviewees mention, however, that there is still room for improvement to avoid unnecessary duplication of actions, and point out that some aspects and ways to deliver the assistance could be harmonized.<sup>124</sup> For example, the use of uniform forms including all information needed for all Legal Organizations, together with a unique system to count the number of domestic violence cases that each organization assists. The first strategy serves to improve the assistance provided to Victims, while the second strategy can assist in understanding the magnitude of the problem together with the incorporation of effective preventive measures.

Coordination with the legislature and especially with the executive at the City and national levels is recognized as one of the main limitations of the PPO for ensuring access to justice.<sup>125</sup> The coordination of efforts with the executive from the City is mentioned as important due to its capacity to implement programmes to promote access points, and to include peripheral programmes to assist Victims to recover from harm. The national executive is also mentioned as being important in the assistance to Victims due to its capacity to so extensively and effectively reach the population. This capacity is mentioned in terms of the economic resources of the City and national executives.

The implementation of strategies by key civil servants towards access to justice is considered to have more of a social grounding rather than a theoretical one.<sup>126</sup> The ongoing development of the PPO assists key civil servants to gradually work on specific needs to improve access. Access to justice for all is viewed by key civil servants as a difficult goal to achieve, due to the almost infinite variables that need to be tackled.<sup>127</sup> Key civil servants began by working on those variables that were considered the most immediate and urgent, and they then opened up the spectrum of their services. This was possible due to the progressive transfer of crimes and contraventions (4.3.1.2.). Social dynamics are also mentioned as demanding adaptation and shifts of priorities in their services. For example, key civil servants state that the decentralized idea of access to justice started when it was decided to go to the emergency neighbourhoods due to the vulnerabilities to access to justice experienced by this population. Key civil servants state that they then focused on domestic violence, on gender topics, mostly due to the number of cases they received if compared to the other crimes and contraventions. They afterwards incorporated children in the access to justice scheme, and developed a communicational

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<sup>123</sup> KCS, 001; KCS, 001.1; KCS, 001.3.

<sup>124</sup> KCS, 001.3.

<sup>125</sup> KCS, 005.

<sup>126</sup> KCS, 003.

<sup>127</sup> Ibid.

programme which included games for children at the Children's Museum<sup>128</sup> to encourage understating of rights. However, when starting to work with vulnerable groups, other groups also came to their attention, such as the elderly and the disabled.<sup>129</sup> The elderly are mentioned as a priority due to their life expectancy. Moreover, age and disability are closely connected due to the decrease in physical functions (e.g. mobility limitations).

#### 4.3.1.7.3. Strategies to Reach a Remedy

Key civil servants consider that the CCPC, with the inclusion of aspects of the adversarial system and the three articles on the rights of victims, helped to design strategies to improve the right of victims to a remedy.<sup>130</sup> Key civil servants say that victims were not sufficiently considered prior to the CCPC and the PPO, and that that lack of consideration diminished the importance of the most affected party in the conflict and of the role victims play to enable effective remedies.<sup>131</sup> OFAVyT is designed, therefore, to reinforce the role of victims.<sup>132</sup>

Key civil servants view the PPO as a relevant tool for parties to reach a remedy. As one key civil servant expresses:

*The issue is that when they [i.e. both parties] come here, they are already in a terrible conflict, they already insulted one another. Without organizational intervention, that at least can delimitate the field and generate respect in the communication, it is very difficult to solve the conflict. Mainly for that reason they tend to say that 'we are in another organizational setting, I have to be respectful.'*<sup>133</sup>

However, even when considered relevant, some key civil servants recognize that the intervention of the PPO can become another burden for parties.<sup>134</sup> Accordingly, many policies implemented by the PPO aim at adjusting accessibility and improving the transition of Victims through the judicial system. Keeping the enthusiasm of providers to continue innovating means to serve society is mentioned as one of the main challenges, however.<sup>135</sup>

Key civil servants consider the activities of the PPO a public service, and many strategies implemented look at public satisfaction. Key civil servants intend, for example, to shift the approach to conflict resolution, moving from a formalized approach that is materialized in complaints towards a dynamic approach: *That is to say, with that, we have changed the bureaucratic mentality associated with the colonial justice.*<sup>136</sup> Therefore, the main idea lies in finding ways to ease the channels to reach a remedy by

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<sup>128</sup> Fundación Museo de los Niños Abasto, "Museo de los Niños."

<sup>129</sup> KCS, 003.

<sup>130</sup> KCS, 001; KCS, 002; KCS, 003; KCS, 005.

<sup>131</sup> KCS, 001; KCS, 001.1; KCS, 001.3; KCS, 005.

<sup>132</sup> KCS, 001; KCS, 001.1; KCS, 001.3.

<sup>133</sup> KCS, 001.

<sup>134</sup> Ibid.; KCS, 005.

<sup>135</sup> KCS, 005.

<sup>136</sup> Ibid.

smoothing the operation of access points and the communication of the latter with organizations, OFAVyT, and prosecutors.<sup>137</sup> Moreover, during the preliminary investigation stage, alternative dispute resolution mechanisms are used to assist parties in arriving at the resolution of their conflicts. This phase is of value because more than 70 per cent of the cases that access the PPO are filed away, and therefore, stay within this preliminary phase without trial.<sup>138</sup>

The type of conflicts that people face is perceived as having a cultural component. Key civil servants perceive that often “conflict” is imbedded within the family tradition of the person. The conflict, as explained by a key civil servant, is *suffered culturally. He suffered because his grandfather suffered, and his father suffered. And at some point it brings different consequences, and I dare to say [that those consequences can result in] physical and psychological distress.*<sup>139</sup> Moreover, people are considered to encounter new problems, motivated mainly by current stress and anxiety, which ultimately trigger conflicting behaviours.<sup>140</sup> The way in which people resolve conflicts is perceived by key civil servants as also having a cultural component.<sup>141</sup> Therefore, interviewees highlight the challenge to assist people living in emergency neighbourhoods because they are *a homogeneous territory, accustomed to a deformed way of exercising the value of justice.*<sup>142</sup>

Key civil servants perceive conflict in a holistic way and legal assistance is mentioned as not being the most important service that the PPO can provide to victims.<sup>143</sup> The limitations of the holistic assistance that the PPO can provide trigger the importance of coordination with other organizations, mostly those implemented by the executive. Ultimately, key civil servants state that the PPO searches for restorative justice.

The restorative justice approach that contemplates the importance of incorporating ways to strengthen the role of victims in the process to find a resolution of their conflicts becomes, within the structure of the PPO, more of a procedural need than a theoretical approach, and can contribute to LE. Restorative justice, on the one hand, reinforces the role of victims in the process, not limited only to their role of witnesses, incorporating alternative dispute resolution mechanisms. On the other hand, restorative justice searches for conflict resolution, looking at repairing the harm caused to victims, and not at the punishment of the offender.<sup>144</sup>

Empirical research shows that “restorative justice may have promise for reducing crime and [there is] quite convincing evidence that citizens who experience restorative

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<sup>137</sup> e.g. access points provide telephone services (a toll-free telephone number) for people to reach the PPO and submit complaints. The PPO has the capacity to send a public officer to corroborate the illicit conduct and then communicate with prosecutors. UODs communicate with OFAVyT when needing their assistance to assess the risk to Victims. The assessment form with the contact information on Victims is sent to prosecutors, allowing immediate intervention. KCS, 003.

<sup>138</sup> KCS, 001.1.

<sup>139</sup> KCS, 006.

<sup>140</sup> Ibid.

<sup>141</sup> KCS, 003.

<sup>142</sup> Ibid.

<sup>143</sup> KCS, 001.2.

<sup>144</sup> UN Secretario General, “Justicia Restaurativa,” para. 16.

justice as victims, offenders and participants, perceive it to be fairer and more satisfying than courtroom justice.”<sup>145</sup> Studies show a decrease in the probability that the offender re-offends when parties experience a restorative justice legal procedure, using alternative dispute resolution mechanisms.<sup>146</sup> Restorative justice considers, however, that parties are not to be exposed to risk when searching for remedies, and this element serves as the main argument to exclude domestic violence conflicts from this approach. Additionally, empirical studies on the effectiveness of restorative justice to resolve conflicts exclude domestic violence from their experiments. They argue that the power imbalance between parties makes the search for a common agreement biased and that the encounter of Victims with abusers may increase their risk to harm.<sup>147</sup> Moreover, studies consider that the process proposed by restorative justice implies voluntary participation of Victims, something that many times is missing.<sup>148</sup> Theory suggests, however, that the probability of re-offending diminishes if the offenders believe they experience a fair process and if they have their social environment involved.<sup>149</sup> The restorative justice approach to family violence issues is starting to be considered suitable when it adapts to gender violence (considering, for example, the risk and the power imbalance).<sup>150</sup>

#### 4.3.1.7.4. Strategies to Assist Victims

Key civil servants consider that the PPO within the adversarial system is the Legal Organization that protects and assists victims.<sup>151</sup> This is the duty of prosecutors and not of judges. The role of victims in the process is redefined by the PPO, and OFAVyT starts as a way to materialize a better assistance to victims.<sup>152</sup> Initially, statistics reflect that almost 80 per cent of victims who access the PPO are women and that 70 per cent of crimes and contraventions are related to threats and harassment in the context of domestic violence. The number of women victims convinces key civil servants that domestic violence is a gender issue, based on an unequal and patriarchal society.<sup>153</sup> However, the gender aspect is mentioned as not being determinant when designing the assistance to Victims: *If the victim is male or female, from a victimology perspective, I do not care; since that extreme psychological dependence, that vulnerability will be the same. Therefore, for me, it is more important the definition of domestic violence than the definition of gender violence.*<sup>154</sup> The gender aspect is viewed as increasing the vulnerability of victims, however.<sup>155</sup>

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<sup>145</sup> Strang and Braithwaite, *Restorative Justice and Family Violence*, 3.

<sup>146</sup> Ibid., 4.

<sup>147</sup> Shapland, Robinson, and Sorsby, *Restorative Justice in Practice*, 83.

<sup>148</sup> Drost et al., “Restorative Justice in Cases of Domestic Violence,” 8.

<sup>149</sup> Sherman, “Domestic Violence and Restorative Justice,” 281–84.

<sup>150</sup> See especially the concluding remarks of Ptacek, *Restorative Justice and Violence against Women*, 281–85; and Drost et al., “Restorative Justice in Cases of Domestic Violence.”

<sup>151</sup> KCS, 001.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.; KCS, 005.

<sup>154</sup> KCS, 001.

<sup>155</sup> Ibid.; KCS, 005.

Key civil servants view the need to design a workable definition of domestic violence, and accordingly the PPO drafted an internal regulation.<sup>156</sup> As analysed in chapter 3, internal regulation 16 was drafted and key civil servants see the value of this regulation as it serves to identify and count domestic violence cases. A check-box is included in the system and service providers have to check it when cases fall under the definition provided by internal regulation 16. Moreover, when cases fall under the definition, a specific type of assistance is provided and OFAVyT delivers a risk assessment report that is then used by prosecutor units to determine preventive measures,<sup>157</sup> and/or a report grounding an opinion about the viability of criminal mediation. These reports are meant to assist prosecutors in ensuring the security and care of Victims.

Victims receive multidisciplinary assistance (i.e. legal, welfare, and psychological assistance) from the PPO.<sup>158</sup> OFAVyT, and its multidisciplinary team, was created to that effect. Initially, OFAVyT was designed to assist victims and witnesses during the preliminary investigation stage. The large volume of domestic violence cases and their complexity triggered the decision of key civil servants to require the mandatory intervention of OFAVyT in domestic violence cases.<sup>159</sup> It is unclear why the number of domestic violence cases grew so rapidly. Key civil servants believe that the reasons may lie in the fact that: (i) Victims are more encouraged to submit a complaint, (ii) domestic violence is more visible due to state campaigns and media coverage, and (iii) more acts of domestic violence are taking place.<sup>160</sup>

Regardless of the reasons for the increase in the number of cases arriving at the PPO, with time, OFAVyT shifted attention to domestic violence cases, and started to incorporate strategies to improve the assistance to this population.<sup>161</sup> Location-wise, OFAVyT was originally located together with the UODs, to assist victims when they approached the PPO for guidance and/or to submit complaints. Prosecutors started to request, more frequently, the assistance of OFAVyT, and therefore, in 2011, key civil servants decided to relocate OFAVyT to the same buildings as those of the prosecutor units.<sup>162</sup> From the foregoing one may observe, on the one hand, the central role taken by prosecutor units and the value that multidisciplinary teams have for the performance of prosecutor units. The incorporation of a non-legal nuance within the dynamics of conflict resolution is therefore appreciated by those handling legal investigations. On the other hand, physical proximity appears as an element that activates communication and joint-performance.

Key civil servants note that ideally all elements that are present within conflicts are to be addressed, and hence value the assistance of OFAVyT (e.g. psychological, economic, and socio-demographic).<sup>163</sup> The value of the assistance of OFAVyT can

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<sup>156</sup> KCS, 001.

<sup>157</sup> KCS, 005.

<sup>158</sup> Ibid.; KCS, 006.

<sup>159</sup> KCS, 001; KCS, 001.1; KCS, 001.3; KCS, 001.2.

<sup>160</sup> KCS, 001.

<sup>161</sup> Ibid.

<sup>162</sup> KCS, 001.3.

<sup>163</sup> KCS, 001; KCS, 005.

also be perceived in how it developed. OFAVyT began to operate in 2007 with a very limited budget, with a small number of personnel, with limited intervention, and assisting a small number of complaints. In 2009, and after a change in the division management, OFAVyT shifted the approach of its service, and the volume of complaints experienced a significant increase. As explained by a key civil servant, *In 2008, I think, the division assisted 800 victims a year; and we are now at 800 per month.*<sup>164</sup> In 2012-2013, OFAVyT experienced another increase in the intervention in domestic violence cases through risk assessment forms and pre-mediation assessments, expressing the conditions of Victims to participate in mediation. Key civil servants say that the increase in the number of cases assisted by OFAVyT relates to a management decision of getting more involved in the conflicts of Victims.<sup>165</sup>

Key civil servants express the importance of the long-term assistance provided by the PPO to Victims. Legal Organizations such as OVD, on the contrary, are considered as lacking long-term assistance, yet are considered very important because they provide immediate preventive measures by drafting comprehensive reports to be used by civil courts and by referring criminal aspects to the PPO.<sup>166</sup> Domestic violence cases that OVD only refers to civil courts stop receiving multidisciplinary assistance and require an active role by Victims to continue in the (private) family process. Therefore, key civil servants consider that if Victims do not have a criminal matter within their complaints, they are left with limited assistance and support to continue with the family process.

In 2012, specialized prosecutor units were created to investigate only domestic violence cases of high risk. The decision to incorporate these specialized prosecutor units derived from the number of domestic violence cases and the principles incorporated in the Brasilia Regulation on the type of assistance Victims need to resolve conflicts.<sup>167</sup> In addition to the number of domestic violence cases, the implementation of specialized prosecutor units also found motivation in the importance considered by key civil servants to provide Victims with a trained prosecutor specialized in domestic violence.<sup>168</sup> Therefore, prosecutors could dedicate more time to deepen investigations, to find ways to gather evidence to bring cases to trial, to receive training on the dynamics and characteristics of domestic violence, and to use all available tools to resolve this multidimensional type of conflict. This strategy responds to human rights recommendations<sup>169</sup> and to the restorative justice theories which consider that tailor-made strategies are needed to deal with domestic violence cases.<sup>170</sup>

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<sup>164</sup> KCS, 001.

<sup>165</sup> KCS, 002; KCS, 003; KCS, 004.

<sup>166</sup> KCS, 001.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.; KCS, 005.

<sup>169</sup> KCS, 001.

<sup>170</sup> Ptacek, *Restorative Justice and Violence against Women*; Drost et al., "Restorative Justice in Cases of Domestic Violence."



Statistics collected by the PPO serve key civil servants in becoming aware of the type of conflicts they assist. Key civil servants refer constantly to the numbers given by statistics. They speak recurrently about “percentages” and refer to the judicial information systems management system (KIWI and JusCABA) as the provider of this information.<sup>171</sup> At the time interviews were held, KIWI was just recently operating and interviews show that time is needed to acquire the skills to fully manage the server. Therefore, most key civil servants rely on the data already processed and available in annual reports, instead of using the data provided by KIWI. Most interviewees mention social reality, legal provisions, doctrinal arguments, and statistics.

The creation of the PPO also derives from understanding the needs of people. As one interviewee mentions: *People did not know what they wanted, where to go, what to ask for. They did not receive orientation or help.*<sup>172</sup> The variation of legal expectations and demands of people are central for the design of the PPO.<sup>173</sup> Key civil servants place resources to understand the legal needs of people. For example, key civil servants base their analysis to understand those social problems on in-house conflict maps,<sup>174</sup> locating conflicts by areas. The PPO perform statistical analysis on what people submit complaints about and why. Key civil servants also work with already built statistics on the demographic characteristics of the City and with their own statistics on paths to access and criminology.<sup>175</sup> However, key civil servants observe that certain results that derive from the statistics are difficult to implement.<sup>176</sup> For example, conflict maps are also meant to extend the idea of decentralized units to approach conflict with appropriate alternative dispute resolution mechanisms. Experience showed them that justice providers and service providers are reluctant to relocate<sup>177</sup> because, as mentioned by a justice provider, this strategy requires them to perform as a “doctor on-call,” reducing their time to investigate cases.<sup>178</sup> Lastly, resolutions of conflicts are also considered by the PPO in a less orthodox way, and key civil servants see the value of offering alternative options to court decisions (e.g. providing parties with the option of criminal mediation or probation).<sup>179</sup>

#### 4.3.1.7.5. Strategies to Improve Participation

Credibility and trust in the judicial system are mentioned as needed elements to increase the connection between the people and the PPO, and therefore, to improve their participation. As explained by a key civil servant:

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<sup>171</sup> KCS, 001.1; KCS, 001.2; KCS, 003; KCS, 005; KCS, 004.

<sup>172</sup> KCS, 005.

<sup>173</sup> Ibid.

<sup>174</sup> e.g. Fiscalía de la Ciudad de Buenos Aires, “Cuarto Informe de Conflictividad.”

<sup>175</sup> Assistant to KCS 001, 001; on statistics collected by the PPO, see Secretaría General de Política Criminal y Planificación Estratégica, “Compendio estadístico. Ingresos generales al MPF e investigaciones preliminares concluidas durante el año 2012.”

<sup>176</sup> KCS, 001.

<sup>177</sup> Ibid.

<sup>178</sup> Male Judge, JP 011.

<sup>179</sup> KCS, 001; KCS, 005.

*The judicial system, after 1983 [year when the democratic government was reinstalled after the last coup d'état], was one of the institutions that fell in terms of reliability. And that is very difficult in terms of having a democratic and republican state. [We were left with] a weak judicial system in credibility, when [the judicial system] is just the guarantor of all rights and controls potential abuses of power.*<sup>180</sup>

Key civil servants mention the implementation of strategies to reduce the gap between the existence of rights and the capacity of people to become aware of and exercise rights.<sup>181</sup> Some strategies aim at all the people while others aim at those who already have accessed the PPO. The strategies that aim at all the people intend to make society aware of the existence of the PPO as a place available to claim for rights and of the rights that can be claimed at this Legal Organization.<sup>182</sup> For this purpose, the PPO implements the already mentioned outreach campaigns (e.g. metro stations).<sup>183</sup> The strategies that aim at those who already have accessed the PPO, as explained by key civil servants, aim at facilitating the communication between Victims and the PPO (mainly prosecutors and OFAVyT). For example, during the first meetings each prosecutor unit is instructed to inform Victims of their options in the process and on their rights.

#### 4.3.1.8. Limitations

##### 4.3.1.8.1. Political Will

Political will, or the conviction of those in power, is perceived as an important element shaping the way policies are implemented. Key civil servants normally speak in the first person about the policies they implemented, and refer to policies implemented by other organizations as being “political decisions.”<sup>184</sup> The motivations for those political decisions are not explored in this study, however.

Key civil servants recognize that many organizations have the capacity to receive domestic violence complaints and see the lack of a harmonized policy between them.<sup>185</sup> For example, they say that, currently, they work with the risk assessments made and referred by OVD, yet not the other way around. In addition, key civil servants express a lack of collaboration with the federal police.<sup>186</sup> It can be deduced that the different political will of organizations becomes a limitation to further develop coordination of actions.

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<sup>180</sup> KCS, 006.

<sup>181</sup> KCS, 003; KCS, 005.

<sup>182</sup> KCS, 003.

<sup>183</sup> KCS, 002.

<sup>184</sup> KCS, 001; Assistant to KCS 001, 001.

<sup>185</sup> KCS, 001.

<sup>186</sup> Ibid.; KCS, 003; KCS, 005.

#### 4.3.1.8.2. Internal Communication

The incorporation of technology to improve internal communication and understanding of cases is perceived as one of the most innovative strategies brought by the PPO.<sup>187</sup> Key civil servants show enthusiasm regarding the information that their data set provides yet, as mentioned above, performing those activities requires a deeper understanding of the tool. Technology tools need, therefore, time to be absorbed; while motivations to use these tools need to be reinforced.<sup>188</sup>

The decentralized access points are limited by their capacity to operate because most immediate interventions need the approval of prosecutors (often located in different physical spaces).<sup>189</sup> Key civil servants address this as a limitation and state that efforts are made to facilitate the communication between the decentralized access points and prosecutor units.

#### 4.3.1.8.3. External Communication

##### 4.3.1.8.3.a. With Other Organizations

Key civil servants reveal a lack of smooth communication with other state organizations and NGOs in order to achieve a well-coordinated service in which people obtain, by accessing the PPO, a comprehensive answer to their questions (e.g. by means of efficient referrals).<sup>190</sup> Further communication and cooperation in the use of resources with the executive, the other divisions and units of the PPO, and the rest of the judicial system is considered necessary to improve the delivery of assistance. In the words of an interviewee and referring to the limited capacity of the PPO to implement massive programmes if compared to that of the executive: *If the judicial system does not operate in a coordinated way with other organizations, it always ends up being very limited [because the capacity of the PPO] is really insignificant if related to the capacity of the executive to reach the population through schools, social programs, and the dissemination of certain activities.*<sup>191</sup>

The need for cooperation with other state organizations and NGOs is mentioned as being relevant due to the following reasons: (i) to provide a centralized answer to people, (ii) to provide a place where people can communicate with the state, and (iii) to obtain empirical data on the type of conflicts faced by people, and use this data to improve the type of service.<sup>192</sup> As mentioned by one interviewee, *There are many people carrying the conflict within their culture, and got used to carry that conflict in their shoulders without sharing it with any organization. We are trying to break with this [scenario].*<sup>193</sup>

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<sup>187</sup> KCS, 005; KCS, 001.

<sup>188</sup> KCS, 001.1.

<sup>189</sup> KCS, 004.

<sup>190</sup> KCS, 006.

<sup>191</sup> KCS, 005.

<sup>192</sup> KCS, 006; KCS, 001.

<sup>193</sup> KCS, 006.

## 4.3.1.8.3.b. With the Community

The capacity to generate awareness about the service provided<sup>194</sup> is also mentioned as a limitation. The limitation is related to the capacity of the PPO to reach people (if compared to that of the executive). The PPO has less economic capacity to undertake large-scale advertisements and, without smooth communication and assistance from the executive, the diffusion of certain activities tends to be difficult.<sup>195</sup> Also, and in relation to the PPO toll-free telephone number, key civil servants state that people tend to call the line 140 (responding to the executive) instead of the line 0800 (responding to the PPO) with topics that fall within the jurisdiction of the PPO. Efforts are planned to improve the transfer of cases from the executive to the PPO. However, key civil servants explain that a three-digit number is easier to remember for people, and therefore, many times people end up calling the line 140 instead of calling the PPO. As explained by one interviewee, *Based on the investigation I have done to find the number of complaints submitted to the government [i.e. line 140, instead of line 0800] there are many more neighbours that need to know the 0800. I do not know if it is due to the lack of knowledge, but they go to a place they should not go [i.e. calling the 140 instead of the 0800].*<sup>196</sup>

Another limitation with the toll-free telephone number is the line service, which does not function correctly. As explained by a key civil servant, *The telephone lines in Argentina are a mess and there are people who tell me that they cannot communicate with the 0800. That is impossible, since we have 34 line-stations.*<sup>197</sup>

## 4.3.1.8.4. Legal Organizational Culture

Key civil servants state that when they started their activities at the PPO there was a break with the previously legal organizational culture, bureaucracy, and disarticulated structure.<sup>198</sup> Key civil servants intended to set up a structure that allows for a better approach to legal conflicts, and to achieve a redesigned structure that facilitates access by people to a system able to provide answers.<sup>199</sup> The precarious starting condition of the PPO was beneficial because it gave ample space for change.<sup>200</sup> The PPO fosters training for employees to allow that change. Training is meant to generate empathy with people by training providers on social conflicts, on vocabulary used by users, and on types of conflicts faced. The PPO also provides employees with incentives to improve their professional education, such as paying the tuition for a master's degree. This training, however, is not accompanied by further financial incentives, such as annual bonuses that may be offered in the private sector, and the lack of financial incentives is considered to reduce the final motivation of providers.<sup>201</sup>

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<sup>194</sup> KCS, 002.

<sup>195</sup> KCS, 005; KCS, 006; KCS, 002; KCS, 003.

<sup>196</sup> KCS, 002.

<sup>197</sup> Ibid.

<sup>198</sup> KCS, 005.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> KCS, 006.

The selection of some providers comes from internal recommendations, and key civil servants decide where recommended providers should be placed (considering the decentralized structure and the schedule of employees).<sup>202</sup> There is some resistance from providers to move to decentralized units. However, this resistance is still tangible when intending to stretch the decentralized idea of justice. As perceived by one interviewee, *Just a theory [that I have] that the judicial operator, under normal conditions, refuses to provide access to justice, a little bit due to their workload, but mostly due to the bureaucratic idea they have about conflict and about their role.*<sup>203</sup> The spread of apathetic behaviours by justice providers and service providers is considered a long-term limitation.<sup>204</sup> Key civil servants say that the increase in workload with the transfer of more crimes and contraventions to the City may generate is not as problematic as the task they have to continue doing when shaping the legal organizational culture and working dynamic.

#### 4.3.1.8.5. Intrinsic Limitations

Key civil servants highlight the intrinsic limitation of the judicial system given by its capacity to act *ex-post* conflict.<sup>205</sup> Therefore, the possibilities of action are limited. Key civil servants mention that people, and even service providers, sometimes tend to confuse the role of the executive to implement public policies and that of the judicial system to ensure the exercise of rights.<sup>206</sup> The question that follows is the need to delimitate what is being asked of the judicial system: to solve the roots of problems or to resolve disputes triggered by problems? In the words of an interviewee:

*But this has sometimes been confused, [mostly] lately. And the answer is that the citizen is confused too. Even with security cases. [People tend to say:] 'No, because the judicial system should have done ...,' and justice actually acts ex-post, after the event occurred. The security issue, which seems to be one of the dissatisfaction topics for the community, has to do a lot with a preventive component, and also has to do ... with the answer given by the judicial system [when conflicts occur...].*<sup>207</sup>

#### 4.3.1.8.6. Coordination with the Executive

Coordination with the assistance programmes implemented by the executive is an important factor in providing Victims with a holistic remedy.<sup>208</sup> Key civil servants mention that Victims might not be willing to receive welfare assistance even in cases where the PPO manages an articulated coordination with the executive. For example, key civil servants mention that many times, even when they manage to create a network with other organizations to assist Victims in leaving the abuser, Victims

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<sup>202</sup> KCS, 004.

<sup>203</sup> KCS, 005.

<sup>204</sup> Ibid.

<sup>205</sup> KCS, 006.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.; KCS, 001.

refuse the assistance, and return to the abuser.<sup>209</sup> Consequently, key civil servants declare that the most they can do is to continue providing assistance when requested, even though knowing that most probably conflicts will not be resolved.<sup>210</sup>

Moreover, coordinating efforts with the federal police is a constraint.<sup>211</sup> Key civil servants explain that they had to close some legal assistance programmes implemented in emergency neighbourhoods due to the lack of support they received from the national executive (i.e. denying the federal police permission to accompany the UODs entering emergency neighbourhoods).<sup>212</sup> Therefore, the service had to be reduced to the security officers available in the City.

#### 4.3.1.9. Sustainability

Key civil servants mention some elements that can jeopardize the continuation or the deepening of strategies implemented since 2007 towards improving access to justice and assisting victims.<sup>213</sup> Those elements are: (i) the potential increase in cases, (ii) the dependency on a large budget to operate, and (iii) the continuation of the enthusiasm of justice providers and service providers to continue deepening the decentralized concept to approach the community.

##### 4.3.1.9.1. Increase of Cases

The capacity to respond to an increased number of cases is not a major concern for key civil servants,<sup>214</sup> since they say that they can absorb more crimes with minor adjustments.<sup>215</sup> Delimitations to the possibility to respond to new crimes are related to those crimes that demand coordination with other organization.<sup>216</sup> For example, the transfer of simple injuries (e.g. automobile accidents) triggers the economic interests of insurance companies and parties together with the need to gather the opinion of experts.<sup>217</sup> Another example is mentioned with the transfer of possession of drugs, demanding more intervention of the executive to allow for treatment and laboratories to analyse the presence of drugs.<sup>218</sup> Drugs, similar to domestic violence, find the complexity in the intervention due to the limited punitive response that the PPO can give as a way to resolve conflicts. Key civil servants mention that they are prepared to take all crimes within a period of six months to one year in order to absorb the structures and adjust them to the approach of the PPO.<sup>219</sup> Key civil servants, therefore, reaffirm that organizations face problems that are not related to having resources needed to respond to demands, but problems that deal with properly

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<sup>209</sup> KCS, 001.

<sup>210</sup> Ibid.; KCS, 002.

<sup>211</sup> KCS, 004.

<sup>212</sup> Ibid.; KCS, 001; KCS, 003.

<sup>213</sup> Anheier, *Nonprofit Organizations*, 148–49.

<sup>214</sup> KCS, 005; KCS, 001.2.

<sup>215</sup> KCS, 005.

<sup>216</sup> Ibid.

<sup>217</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 89; KCS, 002; KCS, 006.

<sup>218</sup> KCS, 006.

<sup>219</sup> KCS, 005.

structuring the organization: *I think the problem of national justice is not so much a problem of resources, but of organization.*<sup>220</sup>

The increase in the number of victims requesting holistic assistance by OFAVyT is not considered a risk either.<sup>221</sup> Key civil servants mention that OFAVyT has a yearly increase of 30 to 40 per cent of domestic violence cases. The division responded to the first increase in cases by increasing personnel and later by limiting their intervention mostly to domestic violence cases. The personnel almost doubled in a three-year period, and by 2012 almost 70 per cent of cases dealt with were on domestic violence. *Before the domestic violence boom other topics were also assisted, but these [other topics] were more relegated.*<sup>222</sup>

The demand for the intervention by OFAVyT might increase with further publicity and more crimes under their jurisdiction. In addition, the structure might need to be reorganized. However, key civil servants consider that the structure is ready for an increase in the demand, yet there is limited reasoning on how they will manage a smooth transition, avoiding *effort and collapse*.<sup>223</sup> When asked whether they considered reducing the spectrum of their service to people with low income, key civil servants state that, if needed, they would first reduce the service based on vulnerabilities, as defined by the Brasilia Regulation, instead of on income.<sup>224</sup> Poverty and gender are viewed as multiplying the vulnerability of Victims. Only under an extreme scenario, such as having *70 times more work*,<sup>225</sup> would key civil servants consider the possibility of limiting their service, based on prerequisites, such as income. In this scenario, key civil servants mention that most probably the service will have to be limited to high risk or urgency, before considering income. Providing a standardized assistance to victims at access points is mentioned as another consideration. The PPO could therefore outsource the basic assistance needed by victims, limiting the assistance by OFAVyT only to those more vulnerable to harm.<sup>226</sup>

#### 4.3.1.9.2. Dependency on a Large Budget

Budget is a common constraint for organizations, though this constraint does not appear as significant during interviews at the PPO. Key civil servants mention that the budget available at the City, even when seeming not to be at risk, is one of the elements that allows for the structure designed, primarily referring to decentralization and the assistance to victims. The budget is mentioned as a limitation to the transplantation of the same structure to other jurisdictions.<sup>227</sup>

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<sup>220</sup> Ibid.

<sup>221</sup> KCS, 001.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.; KCS, 006.

#### 4.3.1.9.3. Keeping Enthusiasm of Providers

Lack or decrease of enthusiasm in providers is considered the main risk for the continuation of the type of service provided by the PPO.<sup>228</sup> The person of the attorney general is perceived as a source of enthusiasm.<sup>229</sup> Some key civil servants and service providers express their desire to have someone continuing with the same approach to the PPO as the current attorney general.<sup>230</sup> His innovative view is considered refreshing, mostly by those in the middle of their professional careers.<sup>231</sup>

The PPO, between 2007 and 2014, designed a strategy to overcome organizational bureaucracies and hostilities, by introducing a different culture of service delivered to people.<sup>232</sup> Key civil servants say that efforts are made to reverse the perception of victims. Many providers tend to naturally perceive new victims as additional work and as an additional problem, instead of an additional case to assist.<sup>233</sup> The efforts to continue strengthening this change of mentality is considered a difficulty to overcome in the long term.<sup>234</sup>

Key civil servants perceive that service providers currently perform according to the suggested initiatives.<sup>235</sup> However, the positive response from service providers is seen as depending on the emphasis stressed by key civil servants together with their control to ensure changes, and of the initial level of enthusiasm service providers experienced towards the new approach of the PPO. Key civil servants perceive that the enthusiasm of service providers is decreasing. As stated by one interviewee, *I think that it is almost an endemic problem, because my feeling is not that [service providers] will stop calling [victims back] because they have a lot of work, but because they lack interest.*<sup>236</sup> As a consequence, new strategies are being designed to keep the PPO growing independently of the enthusiasm of service providers.<sup>237</sup> For example, at the moment of interviews, key civil servants consider the creation of automatic communications (e-mails and SMS) to be sent from the PPO to victims to inform them of the developments in their cases.<sup>238</sup> This strategy aims to increase the role of victims in the process by ensuring communication channels independently of the action of service providers.

The decentralized structure is also at risk due to the reluctance of justice providers and service providers to expand their adaptability to mobilization. Key civil servants experience resistance from attorneys, from the City Council of Magistrates, and from public defenders when trying to improve the delivery of a decentralized service.<sup>239</sup> For

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<sup>228</sup> KCS, 005.

<sup>229</sup> KCS, 001; KCS, 006.

<sup>230</sup> KCS, 001; KCS, 002; KCS, 003.

<sup>231</sup> KCS, 001. In 2014, the PPO experienced the first real change in management since its creation. This study does not examine experiences for the period after 2014.

<sup>232</sup> KCS, 005.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.; KCS, 006.

<sup>235</sup> KCS, 005.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> KCS, 003.



example, key civil servants receive negative responses to the initiative to offer criminal mediation in the same neighbourhoods where the conflicts occur.<sup>240</sup> The resistance is associated by key civil servants with the fact that justice providers and service providers do not want to lose comfort. One interviewee mentions that many times when requested to go to another location service providers react, and tend to say, *I do not want to go there to do this, I do not want to move, ask the users to move. The accused has to be transferred, or the victim, and let me stay at home in my comfort zone.*<sup>241</sup> This reluctance to move is manifested by many providers, regardless of their hierarchical position within the PPO.

### 4.3.2. Rights Awareness

This sub-section on rights awareness studies how the PPO develops mechanisms to increase the awareness of procedural and substantive rights. The analysis of data reveals that key civil servants implement rights awareness strategies for three groups: (i) people (4.3.2.1.), (ii) Victims (4.3.2.2.), and (iii) service providers (4.3.2.3.).

#### 4.3.2.1. Generating Awareness in People

Key civil servants address the efforts made to make people aware of the existence of the PPO and of its legal role.<sup>242</sup> The PPO communicates with people by using: (i) verbal means, when someone accesses the PPO by calling the toll-free telephone number, or visits a UOD, or when members of the PPO go to schools to speak to adolescents;<sup>243</sup> (ii) symbolic means, when placing signs at the entrance doors of UODs, and at metro stations, using graphics designed to attract the attention of people, such as the comic strip character “Gaturro”;<sup>244</sup> and (iii) literary means, when placing information on the Internet or when distributing brochures.<sup>245</sup>

Creating awareness in people is viewed as very expensive, and cooperation with other organizations is mentioned as a way to overcome the economic burden.<sup>246</sup> For example, the executive (and its financial capacity to undertake massive campaigns) is named as being able to assist the PPO in disseminating information over prolonged periods. Moreover, it is worth mentioning at this stage that some justice providers state that the lack of a political decision from the executive to launch massive campaigns about the rights of women retards the needed cultural change.<sup>247</sup>

The decentralized structure is considered as contributing to the insertion of the PPO in society together with advertisements.<sup>248</sup> In addition, even when not mentioned

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<sup>240</sup> KCS, 005; KCS, 003.

<sup>241</sup> KCS, 005.

<sup>242</sup> KCS, 003; KCS, 006.

<sup>243</sup> KCS, 001; KCS, 002; KCS, 003; KCS, 004.

<sup>244</sup> KCS, 003; KCS, 005; KCS, 006; KCS, 004.

<sup>245</sup> KCS, 002; KCS, 005; KCS, 006.

<sup>246</sup> KCS, 006.

<sup>247</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>248</sup> KCS, 003.

during interviews, when joint activities (e.g. PPO with OVD) are performed, the PPO generates awareness of its existence and services to other organizations.

#### 4.3.2.1.1. Channels

##### 4.3.2.1.1.a. Metro Stations

The PPO places, within its capacity, short-term advertisements in metro stations.<sup>249</sup> One of the advertisements focuses on promoting access points through TV screens available on metro platforms, while another advertisement focuses primarily on gender rights and appears in “La Razón,” a free-of-charge newspaper that is distributed also in metro stations.<sup>250</sup> These advertisements in metro stations are considered valuable for Victims, because they are exposed to unsolicited information.<sup>251</sup>

##### 4.3.2.1.1.b. Community-radio

Advertisements are also presented on community-radio podcasting in emergency neighbourhoods.<sup>252</sup> Accessing commercial radio is considered impossible due to the high financial costs. The advertisements on community-radio, as mentioned by an interviewee, include interactions with celebrities. These celebrities participate in interactions on community-radio programmes in order to promote the PPO as a place to submit complaints.<sup>253</sup>

##### 4.3.2.1.1.c. Schools and Museums

The PPO also performs decentralized and mobile campaigns aimed at different sectors of the population.<sup>254</sup> For example, the PPO performs preventive campaigns aimed at children and young adults.<sup>255</sup> Key civil servants focus on campaigns addressing children and young adults because, as mentioned by an interviewee, *They allow us [to enter] somehow into a generation that has the capacity to inform themselves [with their Internet skills] and their elders, and to generate already at that stage [of their lives] an outline of information [that can be used in the future].*<sup>256</sup>

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<sup>249</sup> KCS, 002; KCS, 005; KCS, 006.

<sup>250</sup> KCS, 003.

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.; FARCO is a community-radio led by community groups, see Foro Argentino de Radios Comunitarias, “FARCO.”

<sup>253</sup> One of those advertisements is as follows: [Celebrity 1]: “There is a place, now you can,” [Celebrity 2]: “Do not go to make a complaint,” [Celebrity 3]: “Yes, you CAN, there are places, know your prosecutor.” KCS, 003.

<sup>254</sup> KCS, 002; KCS, 003; KCS, 005; KCS, 006.

<sup>255</sup> KCS, 005; KCS, 006; empirical evidence shows that young adults up to the age of 25 have a greater capacity, if compared to those above 25 years of age, to process new information, adapting faster and easier to new input (e.g. new technologies), see OECD, “PIAAC Conceptual Framework of the Background Questionnaire Main Survey,” 18–20.

<sup>256</sup> KCS, 005.

Prosecutors also mobilize and visit public high schools to inform students about the PPO, its website, and what rights they can claim.<sup>257</sup> Students get to know the faces of prosecutors and they can therefore personalize justice. Students also get the chance to ask prosecutors questions, and this is found by key civil servants as enriching prosecutors, because it reaffirms for them the value of their activities. As explained by an interviewee, *One becomes used to the type of work we do. One loses the dimension of the importance of the work done, and facing a teenager whose values of justice and truth are still at its finest—thank God—has a strong impact also for prosecutors.*<sup>258</sup> The PPO develops another communication programme at the Children’s Museum to teach by use of games.<sup>259</sup> For example, a game was developed on “the paths to justice,” where children experience the path to claim rights. Another game focuses on the communication of rights using cartoons in a touch-screen. The general public is also addressed in outreach campaigns run at the City’s annual book fair, metro stations, and with brochures at the PPO units.

#### 4.3.2.1.1.d. Internet

Technology is viewed by key civil servants as an important tool for awareness of rights.<sup>260</sup> Key civil servants mention the incorporation of strategies with software to allow the PPO to appear as a first option in search engines, being placed above traditional results that offer names of NGOs or newspaper articles.<sup>261</sup> For example, the PPO website pops up immediately as the first option when typing in Google (inside the City) phrases such as “my husband hits me” or “my partner mistreats me.”<sup>262</sup> The virtual world is used by key civil servants as a means by which to reach mostly the younger population because it is viewed as the forum where they search for information. The virtual world is also reaching the adult population, though at a slower pace.

Key civil servants consider this tool as having more impact than a physical booth standing in a neighbourhood and media advertisement, measured by the number of people who access the website if compared with the ones accessing booths.<sup>263</sup> This is considered a way in which to adjust the judicial system to reality, incorporating innovative strategies to approach people, and avoiding the classic delayed reaction of the judicial system.

Most innovations related to rights awareness, as expressed by key civil servants, rely on the Internet as a tool to generate awareness in people. The decision to use the Internet was made after noticing the penetration that the Internet has in the

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<sup>257</sup> KCS, 001; KCS, 002; KCS, 003; KCS, 005. This programme is coordinated with the City Ministry of Education and takes place in the context of the classes on civic education. However, promoting the PPO only in public schools leaves aside a big section of the population that relates to private schools.

<sup>258</sup> KCS, 003.

<sup>259</sup> Ibid.

<sup>260</sup> KCS, 005; KCS, 006.

<sup>261</sup> KCS, 005.

<sup>262</sup> KCS, 006.

<sup>263</sup> KCS, 005.

population living in the City. The same penetration was found with cell phones. Both means are accessible to everyone *almost without social, cultural, or economic barriers*.<sup>264</sup>

#### 4.3.2.1.1.e. Other Channels

Another example is found in the PPO and the Neighbours programme, where service providers meet a group of neighbours in order to understand their legal needs and demands.<sup>265</sup> This space is also used to provide neighbours with information about the PPO, create awareness, and achieve proximity with the people. Lastly, other smaller initiatives are mentioned, such as stamping the toll-free telephone number of the PPO on pizza boxes.<sup>266</sup>

#### 4.3.2.1.2. Content

Key civil servants mention that the content of advertisements needs to be adjusted to the population they want to reach.<sup>267</sup> For example, they say that they cannot have an advertisement in emergency neighbourhoods to promote the disposing of weapons, because for some, weapons are a means of protection. Therefore, prior work needs to be done before promoting certain rights and obligations. Other spots and advertisements refer to the proximity of the PPO, by including words like “it is close” and “the PPO is close to you.”<sup>268</sup> The physical decentralized policy is accordingly verbalized and promoted. “YOU CAN” and “It is CLOSE to you” are the two phrases commonly transmitted in advertisements that promote the services of the PPO. These two phrases represent service as subjective empowerment.

UODs display signs with cartoons and captions that read: “Your rights exist only when you exercise them. Complain if you are a victim or witness a crime. We rely on you in order to achieve justice.”<sup>269</sup> These spots incorporate the private and public elements of the PPO. They speak of the right of people to exercise rights and of the social responsibility of exercising a public right. Moreover, UODs offer space for children to play, and there they display signs and cartoons explaining rights and the role of the PPO.

#### 4.3.2.1.3. Tailor-Made Actions

Key civil servants mention that people from emergency neighbourhoods encounter obstacles to rights awareness related to the way conflicts are understood.<sup>270</sup> An interviewee explains that some illicit behaviours are naturalized by families or cultural groups that have accepted them for more than one generation. Conflicts are consequently embedded in the culture, and the relationship between people and

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<sup>264</sup> Ibid.; KCS, 006.

<sup>265</sup> KCS, 002; KCS, 003.

<sup>266</sup> KCS, 002.

<sup>267</sup> KCS, 003.

<sup>268</sup> Ibid.

<sup>269</sup> Fieldwork notes.

<sup>270</sup> KCS, 003.

conflicts differ.<sup>271</sup> This last point called for adjusting the type and content of advertisements, as previously mentioned.<sup>272</sup>

Tools to communicate also differ according to the population, and, for example, key civil servants explain that in order to communicate in emergency neighbourhoods they rely on intermediary internal agents who have acquired sympathy and trust (e.g. priests “*curas villeros*”).<sup>273</sup> As perceived during one of the research stays, priests walk through neighbourhoods without restrictions and know everyone in those communities.<sup>274</sup> Individuals greet priests with affection and recognition. These priests permanently live in the neighbourhoods, and besides saying mass, they organize group programmes, similar to Scouts, with adolescents. One interviewee describes the interaction: *We walk hand in hand, but not together, hand in hand so that they introduce us [to the neighbourhood], to tell us who are the social agencies working there.*<sup>275</sup> Key civil servants say that they shape the characteristics of their programme in different neighbourhoods by understanding the legal needs of the people. The PPO, therefore, approaches organizations that are already established in neighbourhoods to gain that information. Contrary to popular belief, there are many organizations already settled and assisting in emergency neighbourhoods.<sup>276</sup> In sum, public schools and emergency neighbourhoods are the sectors receiving most attention in terms of rights awareness policies, together with the individuals who take the metro.

#### 4.3.2.1.4. Snowball Effect

Key civil servants perceive that the contact with students has a preventive impact and a transferable effect.<sup>277</sup> On the one hand, students gain awareness of their rights, of Legal Organizations, and with new technologies where to find information and submit complaints. On the other hand, contact with students increases the possibility of that information being transferred to adults in the family. As stated by a key civil servant, *We try to get more through the child than through the adult. [And then], let the child tell his father.*<sup>278</sup> Moreover, when key civil servants go to schools, students approach them to find out what to do in relation to, for example, the abuse they perceive as existing between their parents.<sup>279</sup>

#### 4.3.2.2. Generating Awareness in Victims

Some key civil servants believe that rights awareness actions, like the ones described above, ultimately may trigger an increase in complaints submitted at the PPO.<sup>280</sup> Another stage of rights awareness starts when complaints arrive at the PPO. Access

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<sup>271</sup> Ibid.; Male Judge, JP 011.

<sup>272</sup> KCS, 003.

<sup>273</sup> Ibid.

<sup>274</sup> Fieldwork notes.

<sup>275</sup> KCS, 003.

<sup>276</sup> Lawyer\_Free Interview, SP 029.

<sup>277</sup> KCS, 003; KCS, 005.

<sup>278</sup> KCS, 002.

<sup>279</sup> Ibid.

<sup>280</sup> KCS, 003.

points (e.g. a toll-free telephone number, UODs, or mobile units) perform legal and non-legal referrals, while they also inform people broadly of their options to submit complaints at the PPO.<sup>281</sup> In the latter cases, the Unit of Early Intervention intervenes, offering another stage of rights awareness. Complaints are subject to a “scrutiny check” to see the extent to which they present legal elements to allow the preliminary investigation stage. In those cases complaints are sent to prosecutors, and people meet with prosecutor units that inform them about their rights in their cases. OFAVyT intervenes immediately if victims have a domestic violence complaint, and cooperates with prosecutor units in assisting victims throughout the process. Some intervention can occur at the request of prosecutor units based on special needs of Victims.

Service providers working in the access points are especially trained to inform people of their rights and options.<sup>282</sup> This information is provided in a simplified way, and only if cases reach prosecutors are people informed more specifically about their rights.<sup>283</sup> As mentioned above, key civil servants mention the idea of automating notifications with updates on the cases, via e-mail or SMS, allowing victims to always be informed.<sup>284</sup>

Informing victims during the process is important in order to trigger participation. Key civil servants state that if they could inform victims of every step, victims could also notify the PPO as to whether they agree.<sup>285</sup> In case they disagree, victims could use the tools available by legal provisions to challenge the decisions made. For example, if prosecutors decide to file away complaints, victims are notified, and if they do not agree with the filing, they can require the review of those decisions. This becomes a tool of communication, accountability, and transparency. Efforts to have those notifications delivered to victims through text messages were mentioned.

Some groups are identified as being more vulnerable with respect to receiving information. Therefore, and as mentioned before, OFAVyT, which was originally designed to assist victims through the legal proceedings, shifted towards a more tailor-made assistance to Victims.<sup>286</sup> The assistance aims at ensuring that Victims feel the support of the PPO and understand the process and their role.<sup>287</sup> Therefore, the activities of OFAVyT have a high component of emphasis on informing Victims of their rights and options in face-to-face interviews. UODs are also meant to bridge the *immobile in accessibility*<sup>288</sup> of minorities, and to give them the chance to become aware of their rights and organizational options.

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<sup>281</sup> KCS, 002; KCS, 003.

<sup>282</sup> KCS, 004.

<sup>283</sup> KCS, 002; KCS, 004.

<sup>284</sup> KCS, 005.

<sup>285</sup> Ibid.

<sup>286</sup> KCS, 001.

<sup>287</sup> Ibid.; KCS, 001.1; KCS, 001.3.

<sup>288</sup> KCS, 003.

### 4.3.2.3. *Generating Awareness in Service Providers*

The PPO trusts in the power of technology to disseminate information.<sup>289</sup> Technology is not only used to reach people, but is also used as a library for providers. Internal regulations are all available on the Internet, and when asked about specific topics during interviews, key civil servants very often refer to the information available on the Internet.<sup>290</sup>

Service providers who start working at the PPO receive an operational manual and have to attend regular training.<sup>291</sup> Training seminars for prosecutors are also offered (some jointly with other public prosecutor offices of the country).<sup>292</sup> Other training is designed as a space to brainstorm on ways to assist vulnerable groups.<sup>293</sup> This training is jointly performed with EUROsocial Justice and with the Attorney General's Office and the City Attorney, to understand how to approach and assist people with different needs. Drafting working manuals on due process, for example, or on how to work with gender issues, can be viewed as initiatives to spread awareness of rights.

Rights awareness techniques are also used to inform external organizations of the service provided by PPO and their access points;<sup>294</sup> and this assists the PPO in improving communication with other organizations. Ultimately, the information gets to people through referrals made by the organizations that are already aware of the service provided by the PPO. The PPO mostly approaches the organizations, such as the federal police, that are working with similar conflicts.

### 4.3.3. Rights Enablement

This sub-section on rights enablement studies how key civil servants design the PPO to enable the submission of complaints (4.3.3.1). Moreover, it looks at the mechanisms to enable the exercise of rights that are also viewed as relevant by the LE literature (4.3.3.2).<sup>295</sup> The budget of the PPO is briefly analysed based on how it is perceived by key civil servants as a particularity of the PPO for the implementation of programmes to foster rights enablement (4.3.3.3).

#### 4.3.3.1. *Submission of Complaints*

Key civil servants introduce different means to enable the submission of complaints. The classic centralized organizational option is extended with decentralized units, a toll-free telephone number, e-mails, and webpage options to submit complaints.<sup>296</sup> Moreover, all those means are adjusted in response to the needs of people.<sup>297</sup> For

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<sup>289</sup> KCS, 005.

<sup>290</sup> Fieldwork notes.

<sup>291</sup> KCS, 002; KCS, 001.

<sup>292</sup> KCS, 001.

<sup>293</sup> KCS, 003.

<sup>294</sup> Ibid.

<sup>295</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 21, 23.

<sup>296</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, "Tecnología en el MPF CABA."

<sup>297</sup> KCS, 005.

example, the PPO changed its opening hours, moving from the ordinary judicial hours (i.e. 7:30 to 13:30) to extended hours (i.e. 8:00 to 20:00) and judicial holidays were eliminated.<sup>298</sup> Another strategy to facilitate the experience of people through justice was to set up meetings during non-rush hours at the PPO, helping people avoid encountering employees who were starting their work shifts.<sup>299</sup> Key civil servants say that the toll-free telephone number improves the capacity to assist people and receive complaints, because it is the only PPO division that operates 24-hours-a-day and seven-days-a-week.<sup>300</sup> OFAVyT was created to accompany victims and witnesses throughout the process.<sup>301</sup>

Technology is mentioned as a helpful tool to enable access to justice.<sup>302</sup> Key civil servants say that having the chance to submit complaints online becomes another means besides going to police stations. This tool enables an easier and direct access, which does not require mobility. In addition, the stress Victims may encounter when searching for help on the Internet is also considered by key civil servants with regard to enabling access to justice; and, consequently, means are implemented to allow for a fast and easy response by the search engine on the Internet.<sup>303</sup>

#### *4.3.3.2. Delivery of Assistance*

Key civil servants recognize that some conflicts between people need the assistance of external actors to delimitate boundaries and enable a respectful behaviour and communication.<sup>304</sup> Key civil servants consider that alternative dispute resolution mechanisms gain relevance at the PPO with the CCPC and that those mechanisms facilitate the right of people to reach a remedy.<sup>305</sup> As mentioned above, the PPO tried to mobilize mediations at the places where conflicts occur, though the initiative did not succeed due to the resistance of justice providers and service providers to rotate.<sup>306</sup>

Key civil servants explain that they introduced programmes to enable the participation of the people in the design of the PPO. Those programmes (e.g. PPO and the Neighbours programme) enable key civil servants to outreach to the needs of people.<sup>307</sup> Interviews do not clearly indicate the extent to which these meetings shift the policy agenda of the PPO, even when key civil servants say that they are meant to do so.

Communication and collaboration between providers and between the PPO and other organizations show themselves to be important in overcoming organizational

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<sup>298</sup> Judicial holidays are set vacations during winter and summer.

<sup>299</sup> KCS, 003.

<sup>300</sup> KCS, 002.

<sup>301</sup> KCS, 001; KCS, 001.1; KCS, 005.

<sup>302</sup> KCS, 005.

<sup>303</sup> Ibid.

<sup>304</sup> KCS, 001.

<sup>305</sup> Ibid.

<sup>306</sup> KCS, 003.

<sup>307</sup> KCS, 002; KCS, 001.



limitations. They enable Victims to exercise their right to access to justice, to conflict resolution, to have a life free of discrimination and violence, and to democratic participation (4.3.1.5.; 4.3.1.8.; 4.3.1.9.).

Technology is also introduced to set up a better communication amongst justice providers and service providers to improve the delivery of assistance.<sup>308</sup> KIWI allows for the digitalization of the preliminary investigation stage, where every provider participating in a case has access regardless of location.<sup>309</sup> This accelerates the process, because cases go to the justice provider or service provider, and not the other way around.

Rights enablement is still reduced in terms of the actions people can autonomously undertake (e.g. submission of forms). The current set-up of the PPO, however, allows more chances for victims to access the PPO and participate in the process (e.g. decentralized units, alternative dispute resolution mechanisms, and the PPO and the Neighbours programme).

#### *4.3.3.3. Budget*

The disposition of the budget is mentioned as an important element for the type of structure the PPO is able to implement (4.3.1.9.2). Key civil servants do not mention budget as a constraint nor is it mentioned as a determinant element in order to operate, but as a limitation to the transplantation of the PPO to other jurisdictions.<sup>310</sup> References as to the composition of the budget were made by key civil servants only when directly asked during interviews.<sup>311</sup> Some key civil servants who often referred to the website as the provider of information did not do so when asked about the composition of the budget, while others revealed a vague understanding.

In addition, and in relation to the direct assistance to Victims, the PPO has an immediate economic assistance programme. The budget is limited to exceptional circumstances and provided by OFAVyT to help Victims transit through economic needs after leaving abusive environments.<sup>312</sup>

#### **4.3.4. Rights Enforcement**

This sub-section on rights enforcement studies how key civil servants design and implement policies that can contribute to the enforcement of the rights of Victims. The developments in the policies implemented by key civil servants towards

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<sup>308</sup> KCS, 001; KCS, 002; KCS, 003; KCS, 005; KCS, 006.

<sup>309</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, “Tecnología en el MPF CABA.”

<sup>310</sup> KCS, 001; KCS, 006.

<sup>311</sup> e.g. key civil servants explain that the PPO operates with a budget that comes from the City judicial system after the approval by the City Congress. The City executive provides some divisions and on rare occasions economic assistance to operate (e.g. allowing the use of a physical space to operate or facilitating a mobile unit). The PPO allocates the budget to each division, though divisions, such as OFAVyT, do not handle their own budget. The PPO does not receive financial assistance from international organizations. KCS, 001.

<sup>312</sup> This monetary disposition, as mentioned in chapter 3 of this study, derives from an internal regulation and is perceived as limited and only to be used under very exceptional circumstances, *ibid.*

transparency and accountability are studied due to their importance (4.3.4.1.). Moreover, this sub-section contemplates the extent to which key civil servants eliminate obstacles to enforcement, which as mentioned by the LE literature, make “the possibility of enforcing rights unreal”<sup>313</sup> (4.3.4.2.). Lastly, this sub-section views the ways in which key civil servants implement different alternative dispute resolution mechanisms considered by the LE literature as helpful in overcoming inefficiencies in rights enforcement mechanisms<sup>314</sup> (4.3.4.3.).

#### *4.3.4.1. Transparency and Accountability*

Transparency and accountability can derive from efforts by key civil servants to use technology to make information visible to people. On the one hand, people can access all internal regulations and City Tribunals’ decisions through the Internet; and, on the other hand, key civil servants, justice providers, and service providers can access all cases. Access to cases is limited within each prosecutor unit and only a limited number of employees have automatic access to the data-sets of all prosecutor units.<sup>315</sup> However, many times communication between justice providers and service providers is fostered through information systems management.

The above-mentioned technological tools to communicate with the PPO improve automated communications and transparency.<sup>316</sup> The decision on who gets what information is not left to justice providers or service providers, and the information is sent automatically, fostering equal enforcement of rights (4.3.2.1.; 4.3.2.2.).

People can express their contentment or discontentment with the service received at the PPO through customer-satisfaction surveys (4.3.1.7.). Interviews do not mention the use of those surveys for accountability purposes. Key civil servants mostly describe that they exist, that results show satisfaction, that the delivery of surveys is not done systematically, and that service providers are sometimes reluctant to implement them.<sup>317</sup> Therefore, customer-satisfaction surveys are considered superficial and almost the same as “bothering” people instead of a means of transparency and accountability.

Lastly, all decisions of prosecutors to file away domestic violence complaints have to be reviewed by the Court of Criminal Appeals. This review, as applied to domestic violence cases, can be considered a tool for Victims to hold prosecutors accountable for their decisions, and OFAVyT must assist Victims in this process.

#### *4.3.4.2. Elimination of Obstacles*

The PPO provides assistance free of charge. Parties do not have to pay court fees nor do they need the representation of lawyers. Victims can be represented by prosecutors, and the accused can be represented by public defenders. Prosecutors,

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<sup>313</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 25.

<sup>314</sup> Ibid., 27.

<sup>315</sup> KCS, 001.1.

<sup>316</sup> KCS, 005.

<sup>317</sup> KCS, 003; KCS, 004.

OFAVyT, UODs, and the toll-free telephone number do not apply an income eligibility criterion; therefore, everyone is eligible for this assistance. However, parties can participate in the process with the representation of lawyers if they so wish.

Efforts are being devoted to reduce the delays in the assistance delivered by the PPO. Some of those efforts include: (i) the compliance with legal provisions of the CCPC that require prosecutors to conclude the preliminary investigation stage within a three-month period after the accused is notified of the alleged facts; (ii) the incorporation of technology to facilitate communication; (iii) the directions key civil servants give to service providers instructing them not to have individuals waiting to be assisted;<sup>318</sup> (iv) the incorporation of the Units of Early Intervention;<sup>319</sup> and (v) the centralization of administrative tasks in one single unit, the Unit of Centralized Administrative Procedures.<sup>320</sup> Consequently, the service to people is decentralized, while the administrative tasks are centralized to avoid duplication of work.

The specialized prosecutor units aim to improve the service to Victims and assist in enforcing rights at trial.<sup>321</sup> The criminal mediation is restricted, considering the power imbalance that exists in domestic violence cases, and prosecutors spend more time in collecting evidence to argue at trial.

There is a small chance that cases will lead to trial. Therefore, the concept of enforcement of rights differs from the punitive approach, since most frequently the accused does not receive a penalty. Parties are given a chance to work with the conflicts with the assistance of justice providers and service providers. Moreover, key civil servants recognize that one of the main advantages of the access points is the capacity to provide people with a quick first direction towards where to go to resolve their conflicts.<sup>322</sup> The training of providers to offer an immediate and proper response is mentioned as an improvement of the PPO.<sup>323</sup> Additionally, the way that information is provided is also improved by the access points. The service tries to focus on the service provided rather than on the jurisdictional aspect. As mentioned by a key civil servant while explaining the motivation for this strategy:

*The citizen cares little about who represents justice. [Impersonating a service provider:] 'We take cases that fall under this typified crime, but if not, no.'* [Impersonating a Victim:] 'I come to make a complaint, you told me that I can make a complaint, and now, you found a hair to one side and I cannot do it.' This was somewhat difficult, and I really think that the Court of Criminal Appeals in this regard was generous, there was no selfish interest, or this is my territory and this

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<sup>318</sup> KCS, 005.

<sup>319</sup> KCS, 001. Units of Early Intervention also reduce unnecessary delays, accelerating referrals if the PPO is unable to take a case, and decongesting the volume of unnecessary work for prosecutors.

<sup>320</sup> Ibid. The Unit of Centralized Administrative Procedures centralizes the requests of prosecutors (e.g. if prosecutors need to collect criminal records, they send an electronic message to that unit, and the unit centralizes all requests for criminal records and activates the communication with the pertinent organization).

<sup>321</sup> KCS, 005; KCS, 001.

<sup>322</sup> KCS, 002; KCS, 004.

<sup>323</sup> KCS, 002.

*is your territory, but thinking on the type of people that recur to these places: people with fewer resources, people that do not have an attorney who presents complaints for them. Why denying an improved centralized service to present a claim? And this was handled well [in relation to the coordination with the Court of Criminal Appeals].*<sup>324</sup>

Police officers are important for the enforcement of rights, but key civil servants mention that the coordination with the police is not always easy, occasionally due to political problems.<sup>325</sup> For example, key civil servants admit to being denied the assistance from the federal police to cooperate in City activities to enter emergency neighbourhoods.<sup>326</sup> Complaints on the quality of the performance of police also became a constraint for enforcement. Therefore, key civil servants mention that currently they are restricted to working with the City police (which has limited capacity to intervene) and are promoting their access points for people to submit complaints.<sup>327</sup> Key civil servants also say that the PPO exercises “control” over the police, because the PPO corroborates the effective intervention when they ask the police to assist people.<sup>328</sup> Therefore, the interaction of the PPO and the police becomes another element of internal accountability.

#### 4.3.4.3. *Alternative Dispute Resolution Mechanisms*

Most cases that reach the PPO never pass the preliminary investigation stage, as already mentioned. Therefore, key civil servants recognize that often mediations are the only chance for parties to receive external assistance for resolving their conflicts.<sup>329</sup>

#### 4.3.5. **Partial Observations**

The importance of legal provisions for the design of Legal Organizations is perceived from the analysis above. Key civil servants base the design of the PPO primarily on adjusting the PPO to legal provisions and, secondly, on following personal experience and understanding of the legal needs of people. Communication with organizations from other jurisdictions is also relevant. Legal provisions affect primarily the type of crimes and contraventions that the PPO serves, and the approach the PPO takes towards assisting victims and towards conflict resolution. The CCPC provides elements of the adversarial system that trigger the implementation of a more problem-solving method. The CCPC also brings a restorative justice approach and gives provisional elements that strengthen the role of victims in the process to find a resolution of their conflicts. These elements can contribute to the LE of people,

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<sup>324</sup> KCS, 003.

<sup>325</sup> KCS, 001; KCS, 002; KCS, 003; KCS, 005; KCS, 006.

<sup>326</sup> KCS, 001; KCS, 004.

<sup>327</sup> KCS, 001.

<sup>328</sup> e.g. if a person calls to complain about the noise of a neighbour, and the police have gone there and stated that nothing is perceived, then the PPO can send a judicial officer, who goes to the place and makes notes with observations. These notes are referred to prosecutors and are used for the investigation, KCS, 002.

<sup>329</sup> KCS, 001.

because they strengthen a “problem-solving approach,”<sup>330</sup> giving relevance to the parties.

A look at key civil servants reveals an increase in the consideration and analysis of the needs of people, emphasizing particularly those of victims. The increase also responds to the enforcement of recent legal provisions focussed on the rights of victims. Conflict resolution is also viewed more flexibly and less standardized, and key civil servants express the main strategies to improve the assistance to people: decentralization towards spreading the service to the community and centralization of the resources of the PPO.

Access points become relevant for the decentralized structure, but justice providers and service providers centralize their assistance. This dynamic affects awareness of rights in the same way. On the one hand, the PPO decentralizes large-scale advertisements (e.g. metros, newspapers, and the City’s annual book fair) and user-oriented advertisements (e.g. visiting public high schools to raise awareness in adolescents about their options and rights). On the other hand, the PPO centralizes rights awareness, and service providers inform victims of their rights and options when they access the PPO, as demanded by legal provisions. Technology is developed to become another source of rights awareness, enhancement, and enforcement; and ideas to improve rights enablement also rely on technology. Alternative dispute resolution mechanisms gain relevance to enable and enforce rights within the assistance provided by the PPO, which is mostly of relevance during the preliminary investigation stage.

#### **4.4. Justice Providers**

This section examines data collected from justice providers, i.e. prosecutors, mediators, and judges. Responses from justice providers differ, on some occasions, based on their gender, function, and training. For example, female justice providers show a stronger value commitment towards domestic violence issues if compared to male justice providers. That differentiation is found mainly amongst female and male judges and prosecutors. Such distinction cannot be perceived amongst female and male mediators. Mediators mention “parties” as protagonists in conflicts; and people and their claims are the focus of the mediators’ reasoning. Judges and prosecutors, even when personalizing cases, centre their reasoning in legal provisions and court decisions. Judges, more than prosecutors, perceive parties as those who are helped, and they position themselves in a place of hierarchy over parties.

The above-mentioned observations do not allow for general conclusions, though they seem to be in line with the training and function of each justice provider: prosecutors investigate, mediators assist parties in finding agreement for their conflicts, and judges rule. It is, therefore, not surprising that mediators enhance the value of communication as a tool for empowerment and for consent between parties; while judges recall their intervention in the conflicts of parties. Mediators, even when

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<sup>330</sup> Maru and Moy, “Legal Empowerment and the Administrative State: A Map of the Landscape, and Three Emerging Insights,” 62–63.

recalling the outcome, incorporate more frequently in their examples the personal feelings of parties. Therefore, mediators are perceived as ruled by those feelings of the parties; while prosecutors and judges are ruled by legal provisions and court decisions. This does not imply that prosecutors and judges do not consider parties important, but that the relation between the law and parties follows that order (i.e. first the law and then the parties). This relation between the law and parties is addressed in a more equal manner by prosecutors if compared to judges. These prosecutors more clearly recognize the limitations of the law based on the conditions of Victims, and they adjust the law to the needs of Victims.

#### 4.4.1. Rights Enhancement

This sub-section on rights enhancement studies how justice providers perceive the changes in the approach by the judicial system on domestic violence cases (4.4.1.1.) and on the rights of Victims (4.4.1.2.). Moreover, it includes views on the type of differences in the individuals they assist (4.4.1.3.). This sub-section also analyses the developments in legal provisions and court decisions as being of assistance for Victims who obtain access to justice (4.4.1.4.), together with the value of the incorporation of specialized prosecutor units within the PPO (4.4.1.5.). Lastly, remaining challenges faced by justice providers are analysed (4.4.1.6.).

##### 4.4.1.1. Approach to Domestic Violence

A judge with over four decades of experience in the judicial system explains the shift he perceives in the approach to domestic violence issues by the judicial system.<sup>331</sup> He explains that before the 1980s most justice providers and service providers within the criminal courts were men, and the small number of domestic violence cases they received included severe injuries. Domestic violence cases were perceived as a rarity. The judge recalls that most of these rare cases followed a stereotype: a very charismatic man coming with his wife hand in hand, and a wife asking the judge to dismiss the case because her husband “is a good man.”<sup>332</sup> Prosecutors add that there was a common misbelief in the saying of Victims and a direct adjudication of fault to their behaviour.<sup>333</sup> In addition, the inaction of the state for many years is perceived by a prosecutor as one of the reasons for the current high number of femicides.<sup>334</sup> As explained by a prosecutor:

*Women do not insist [in their claims]. And that is why I am telling you, in my view: the state's duty is to some extent to assist those parties that are at a disadvantage. And women tend to be in a disadvantaged position. Women, or victims of domestic violence in general, most of them are women, are usually facing a disadvantage for several reasons, [which are related to] this issue of their*

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<sup>331</sup> Male Judge, JP 011.

<sup>332</sup> The interviewee explains from experience a typical case of a couple going to court with a domestic violence case, *ibid.*; for an explanation about how these dynamics are studied and analysed in theory, see Genoveva Cardinali, “Violencia doméstica.”

<sup>333</sup> Female Prosecutor, JP 004; Male Prosecutor, JP 002; Male Prosecutor, JP 003.

<sup>334</sup> Female Prosecutor, JP 001.

*vulnerability, because they are mentally subjugated, because they are psychically subjugated to the abuser, because they are dependant of the abuser's income.*<sup>335</sup>

Moreover, a judge explains that, until the end of the 1990s, Victims were commonly questioned by criminal courts about why they made certain decisions (e.g. why they stayed in the relationship, why they did not submit a complaint before, why they did not leave the abuser before).<sup>336</sup> The counterargument given by another judge is the belief of judges in the statement that every conflict needs the intervention of both parties, and therefore, those types of questions still aim at understanding the participation of Victims in domestic violence.<sup>337</sup>

An important and rapid change started to be perceived by an interviewee in the 1990s, and he states that the gender approach taken by the judicial system may have reached the opposite extreme. In his words, *In ten years, in the judicial system, we will need to ask for a male quota law.*<sup>338</sup> The change is credited to the fight by NGOs in particular and by organizations in general. Interviews in the City, differently to those held in France, do not recognize that consolidated feminist movements triggered change.<sup>339</sup> Moreover, the fact that more women are approaching the judicial system and submitting domestic violence complaints helps to make justice providers more acquainted with these cases and to break with several stereotypes (e.g. charismatic men coming to the tribunal with insecure women, men controlling the private sphere of the family, the family as an institution based on love and respect that cannot be dissolved, the state as an actor without grounding to intervene in private family matters, Victims actually looking for another benefit when submitting domestic violence complaints, and Victims who submit complaints viewed as *hysterical, crazy, liars, and prostitutes*).<sup>340</sup> Changes in legal provisions also assist in breaking with stereotypes because they give a normative foundation to remove stereotypes. For example, a prosecutor explains that, *Whether private or public, if it is a crime it is a crime. If he threatens, there is a threat; regardless it took place in the bathroom of the house [or in public]. Because that is the historical approach of courts that systematically abandoned victims, victims of [gender] violence.*<sup>341</sup>

None of the interviewed justice providers contemplates that Victims by themselves will make up a domestic violence complaint with secondary interests. Moreover, most prosecutors do not perceive that Victims might have a second intention when presenting criminal complaints.<sup>342</sup> Their argument defends that women will never go through the legal procedure, exposing their stories and being subject to investigation, just to bother the other party. They perceive this conception as a leftover from the male chauvinistic tradition. Other judges and prosecutors, however, contemplate that

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<sup>335</sup> Ibid.

<sup>336</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>337</sup> Male Judge, JP 011.

<sup>338</sup> Ibid.

<sup>339</sup> Key Civil Servant at the French Ministry for Women, In-depth Interview.

<sup>340</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor, JP 004; Female Prosecutor, JP 001; Female Prosecutor, JP 004; Male Judge, JP 011; Male Prosecutor, JP 002.

<sup>341</sup> Female Prosecutor, JP 001.

<sup>342</sup> Ibid.; Female Prosecutor, JP 004.

women might have a second intention when presenting criminal complaints.<sup>343</sup> Their argument accepts that some women use this path as revenge or as a faster way to obtain temporary child support. Yet, those justice providers say that most of the time these attitudes are motivated by lawyers (in the case of child support) and by family members or friends (in the case of revenge). Mediators do perceive during mediations a strategic game being played by the parties, and even recognize that often the accused ends up being the actual victim.<sup>344</sup> Some mediators even perceive that males are labelled the “bad ones” from the time complaints are received at the PPO.<sup>345</sup> In general, mediators recognize a larger optional spectrum of characteristics of victims and accused.

The role of justice providers and service providers in ensuring the rights of Victims is viewed as essential by some prosecutors.<sup>346</sup> A special note is made by female prosecutors to the need for justice providers and service providers to recognize the rights of Victims without stereotypes.<sup>347</sup> Moreover, some prosecutors stress that justice providers need to work with a gender perspective.<sup>348</sup> Accordingly, justice providers still need to “get rid” of the cultural non-believing approach to the arguments presented by Victims before the judicial system.<sup>349</sup> Those beliefs are recognized to be culturally immersed in some service providers who receive complaints (e.g. police officers).<sup>350</sup> Working with a gender perspective, in this respect, means to ensure, for example, that the service provider taking the complaint is a provider trained and free from prejudices.<sup>351</sup> This becomes important mostly when providers receive complaints and when they gather and evaluate evidence, which often is limited in domestic violence cases, though needed to sustain complaints and move to trial.<sup>352</sup>

Justice providers recognize that there has been a shift in the way the testimony of Victims is considered nowadays by the judicial system. For example, the PPO is currently designed in a way such that Victims cannot withdraw their complaints and prosecutors cannot file the complaint away without being reviewed.<sup>353</sup> A judge views a contradiction in this policy because, on the one hand, the system encourages women to submit complaints and to value their decision to do so and, on the other hand, the system does not value their decision to withdraw their complaints.<sup>354</sup> He further states that sometimes that situation can result in illegal acts by Victims, because if they do not testify in court hearings they can be subject to false testimony.

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<sup>343</sup> Male Judge, JP 011; Male Prosecutor, JP 002.

<sup>344</sup> Female Mediator, JP 006; Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009.

<sup>345</sup> Female Mediator, JP 009.

<sup>346</sup> Genoveva Cardinali, “Violencia doméstica.”

<sup>347</sup> Female Prosecutor, JP 001; Female Prosecutor, JP 004.

<sup>348</sup> Female Prosecutor, JP 001; Female Prosecutor, JP 004.

<sup>349</sup> Female Prosecutor, JP 004; Genoveva Cardinali, “Violencia doméstica.”

<sup>350</sup> Female Prosecutor, JP 004.

<sup>351</sup> Ibid.; Male Assistant to Female Prosecutor 004, JP 004.

<sup>352</sup> Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>353</sup> Female Prosecutor, JP 001; Female Prosecutor, JP 004.

<sup>354</sup> Male Judge, JP 011.



The visibility that domestic violence cases are gaining is also reaching court decisions and doctrinal writings, assisting prosecutors in using different arguments that might trigger surprising court decisions (e.g. court decisions extending the value of evidence presented solely by Victims).<sup>355</sup> This allows prosecutors to build strategies and arguments in an area of the law that is experiencing a transformative process. As stated by one interviewee, *The problem of domestic violence is very dynamic, because it is an issue that is becoming increasingly relevant in different societies, in the media, and we are constantly experiencing a change in jurisprudence.*<sup>356</sup> Therefore, the “case-by-case” investigation gains relevance.<sup>357</sup>

#### 4.4.1.2. Rights of Victims

Justice providers agree that the rights of Victims were traditionally ignored by legal provisions and organizations.<sup>358</sup> Prosecutors consider that some judges who hold the traditional mentality find it difficult to adjust and recognize the role and rights of Victims without overlooking the rights of the accused. As one interviewee states:

*Oh, the judges that advocate for constitutional guarantees! Let us be clear, we must all advocate for constitutional guarantees because it is a constitutional obligation. There is no room for administrating these guarantees. But there is also the guarantee of due process for the victim. That is the first point. Point two: I eventually complain about the abolitionist approach of those who never want to enforce the law.*<sup>359</sup>

Moreover, Victims are not viewed as being possibly assimilated to victims of other crimes based on the array of emotional conditions and ties to the accused that do not exist, for example, in victims of robbery.<sup>360</sup> Some prosecutors claim that the characteristics of Victims also make domestic violence cases more difficult to investigate,<sup>361</sup> while others consider that a domestic violence case has its particularities, as does every case.<sup>362</sup> Prosecutors perceive the decisions of Victims to exteriorize their conflicts as a strong sign for external help, because often they keep conflicts to themselves for many years before exteriorizing them.<sup>363</sup> In addition, prosecutors perceive that the visibility of domestic violence cases creates social awareness and contributes to the involvement of third parties (e.g. complaints submitted by neighbours).<sup>364</sup>

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<sup>355</sup> Male Prosecutor, JP 002.

<sup>356</sup> Ibid.

<sup>357</sup> Female Prosecutor, JP 001.

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Female Prosecutor, JP 004.

<sup>361</sup> Ibid.

<sup>362</sup> Male Prosecutor, JP 003.

<sup>363</sup> Ibid.; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004.

<sup>364</sup> Male Prosecutor, JP 002.

#### 4.4.1.3. Type of Individuals

Justice providers, similar to key civil servants, observe a difference in the type of conflicts brought by people from different neighbourhoods and social classes.<sup>365</sup> Mediators, for example, consider the decentralized strategy implemented by the PPO as a challenge because the rotating dynamics makes them face, on a daily basis, very different social problems to which they need to adapt rapidly.<sup>366</sup> Moreover, a judge considers the middle class to be mostly educated and the most frequent user of the judicial system if compared to the upper and lower classes.<sup>367</sup> He adds that the upper classes mainly hide their conflicts or make arrangements through private agreements, while the lower classes are constantly encountering conflicts without approaching the judicial system.

#### 4.4.1.4. Legal Provisions and Court Decisions

Human rights treaties are mentioned as a valuable foundation and guide for changes in the design of the PPO. CEDAW is mentioned as one of the key human rights treaties that provides justice providers with definitions on gender violence and discrimination, and offers guidelines for the performance of justice providers and service providers.<sup>368</sup> As mentioned by a prosecutor, the incorporation of the right of women to a life free of discrimination and violence *should enlighten and direct the work of every [justice provider and service provider]. States have also duties to perform, ... aiming at services and practices to ensure the enjoyment of those rights.*<sup>369</sup> Moreover, justice providers consider that the vulnerable groups defined by CEDAW help to highlight the need to assist groups based on their particular vulnerabilities.

Additionally, human rights treaties are viewed by prosecutors as a valuable tool to argue for the traditionally underestimated testimony of Victims.<sup>370</sup> For example, the decision of the Inter-American Human Rights Court in the case “Cotton Field” interpreted article 8 of the Convention of Belém do Pará as being important when arguing for the responsibility of the state to act against gender violence with a gender perspective.<sup>371</sup> That convention is also important for prosecutors to argue on the rights of Victims to due process and to be heard.<sup>372</sup>

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<sup>365</sup> Male Judge, JP 011; Female Mediator, JP 006.

<sup>366</sup> Female Mediator, JP 006.

<sup>367</sup> Male Judge, JP 011.

<sup>368</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004; Female Prosecutor, JP 004.

<sup>369</sup> Genoveva Cardinali, “Violencia doméstica.”

<sup>370</sup> Male Judge, JP 010; Female Prosecutor, JP 001; Female Prosecutor, JP 004; Male Prosecutor, JP 003; Male Prosecutor, JP 002, 2.

<sup>371</sup> González et al. v. Mexico (Inter-American Court of Human Rights 2009); the decision in González et al. v. Mexico (“Cotton Field”) requires states to change the way of investigating domestic violence cases by implementing policies to improve the approach to gender violence and to require states to modify the way facts are investigated in cases of violence against women by introducing a gender perspective. The state has the obligation to identify and punish those enforcement officers (e.g. police officers and judges) who act in discriminatory ways, see Genoveva Cardinali, “Violencia doméstica.”

<sup>372</sup> Female Prosecutor, JP 001.

Decisions of the City Supreme Tribunal are also viewed as important by prosecutors and judges. Special mention is made by prosecutors to the case “Newbery Greve,”<sup>373</sup> which establishes that the evidence of Victims can no longer be dismissed based on the fact that it is the only evidence.<sup>374</sup> Prosecutors perceive that judges of the City Supreme Tribunal more frequently make reference to international court decisions, the Convention of Belém do Pará, and Law 26485. This is perceived by prosecutors as a shift in the way in which the evidence presented by Victims is valued. Members of the City Supreme Tribunal expressed in “Newbery Greve:”

*[The Convention of Belém do Pará and Law 26485] stated that the evidence must be considered with a gender perspective and, therefore, they gave entity to the specific ‘context’ in which [the facts] took place, that is to say, within the context of a conflict ...; [That] ‘context’ is revealed by different witnesses (who know about facts based on what they were told) and several professionals who, from the beginning of the process, have direct contact with the victim.*<sup>375</sup>

Some prosecutors further state that due to human rights treaties *the state has decided to wake up from their traditional lethargy with regards to Victims who [during many years] appeared invisible to the eyes [of the judicial system].*<sup>376</sup> However, prosecutors consider court decisions more relevant than legal provisions at the time of arguing their cases.<sup>377</sup> Most prosecutors perceive the decision in “Newbery Greve” as proper and in line with the understanding of domestic violence as a crime that requires a different investigation and a different valorization of the evidence.<sup>378</sup> However, one judge rejects the case in view of the violations to the rights of due process of the accused.<sup>379</sup>

A disparity between domestic and international law is mentioned by justice providers in relation to the granting of probation in domestic violence cases. Human rights treaties are used to argue in favour of the rights of Victims and against the application of article 76bis Argentine Criminal Code, granting the right of the accused to request probation for crimes with a penalty of three years or less in prison.<sup>380</sup> Probation suspends the trial against the accused and replaces the penalty with an obligation. Some prosecutors argue that probation in domestic violence cases violates article 7 of the Convention of Belém do Pará. The Argentine Supreme Court ended the discussion in the case “Góngora,” agreeing with the request by the prosecutor not to

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<sup>373</sup> Referring to the case known as “Newbery Greve” on how to consider the testimony of Victims, see Newbery Greve, Guillermo Eduardo s/ inf. art 149 bis CP (Tribunal Superior de la Ciudad 2013).

<sup>374</sup> Vote of Judge Alicia E. C. Ruiz, see *ibid.* 6.

<sup>375</sup> Votes of Judges Ana María Conde and Inés M. Weinberg, see *ibid.* 2.

<sup>376</sup> Female Prosecutor, JP 001.

<sup>377</sup> e.g. the consideration of reports by service providers who talked to Victims throughout the legal proceedings or the testimony of family members on the well-being of Victims, Male Prosecutor, JP 002.

<sup>378</sup> Male Prosecutor, JP 003; Female Prosecutor, JP 004; Female Prosecutor, JP 001; Male Prosecutor, JP 003; Male Judge, JP 010.

<sup>379</sup> Male Judge, JP 011.

<sup>380</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 76bis incorporated by Law 24316 in 1994.

grant probation to the abuser based on the right of Victims to a fair resolution.<sup>381</sup> Arguments in favour mention the failure of the punishment for conflict resolution and the need to introduce, when possible, alternative ways. Arguments against express the need to protect, by all means, the right of Victims to a life free of violence.<sup>382</sup> The unanimous decision in the case “Góngora” denies probation as an alternative to the penalty for the accused and requires the debate to continue in the lower court to provide the Victim with a just and fair procedure, because only a court decision may provide a definite pronouncement on the guilt or innocence of an abuser.<sup>383</sup> This decision represents a higher valorization of the rights of Victims to access to a conflict resolution and offers a direct reference to the international responsibility of the state. Critics of the decision focus on its inconsistency with domestic legal provisions, doctrinal interpretations, and previous court decisions.<sup>384</sup> They also mention the diminishment of the rights of the accused and the non-recognition of alternative dispute resolution mechanisms as a more efficient way to resolve conflicts, to re-socialize the accused, and not to punish the accused (punitive approach).<sup>385</sup>

Internal regulation 16 is mentioned by prosecutors as being a pioneer in adapting international standards on how to deal with domestic violence cases.<sup>386</sup> Justice providers remark that at the beginning there was resistance to internal regulation 16, and only with time and training on gender topics did it become more accepted. Similar resistance occurred with considering the contextual evidence as an indicator of the existence of the alleged crimes.<sup>387</sup> Contact with the international community, such as training received on gender discrimination and violence, is considered important for the understanding of the problem of gender violence and discrimination. It is mostly due to this training that justice providers highlight the relevance of the decision of the PPO in requiring from the higher court the review of their decisions to file away domestic violence complaints, and the importance of changing the approach to the evidence presented by Victims.<sup>388</sup>

Judges perceive that with the adversarial system cases gain personification, and the constitutional guarantees of parties are properly protected if compared to the inquisitorial system still present at the federal level.<sup>389</sup> Furthermore, one prosecutor

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<sup>381</sup> Male Prosecutor, JP 003; referring to Góngora, Gabriel Arnaldo s/ causa n 14.092 (Corte Suprema de Justicia de la Nación 2013).

<sup>382</sup> For a newspaper article briefly presenting the main arguments of both views, see Página|12, “La probation y la violencia de género.”

<sup>383</sup> See Góngora, Gabriel Arnaldo s/ causa n 14.092 (Corte Suprema de Justicia de la Nación 2013).

<sup>384</sup> For an argument on how the court decision “Góngora” diminishes constitutional principles of legality, equality before the law, and the presumption of innocence, together with the inconsistency in “Góngora” compared to previous decisions, see Cáccaro Olazábal, “Crítica al fallo ‘Góngora’: ¿Solución real o ficticia?”

<sup>385</sup> *Ibid.*; moreover, for a reasoning on the role of prosecutors and the extent to which judges can rule against their consent to probation, see Smolianski, “El fallo ‘Góngora’ y la probation, a propósito de lo vinculante de la oposición fiscal.”

<sup>386</sup> Female Prosecutor, JP 004.

<sup>387</sup> *Ibid.*

<sup>388</sup> *Ibid.*

<sup>389</sup> Male Judge, JP 010.

highlights that recent legal provisions that divide functions between judges, on the one hand, and prosecutors and public defenders, on the other, improve the functioning of the criminal judicial system.<sup>390</sup> Moreover, judges perceive that impartiality, equality, transparency, and celerity are gained with recent legal provisions that require judges to base their court decisions on oral arguments instead of written documents.<sup>391</sup>

Judges, consequently, consider that the adversarial system improves a number of aspects. (i) Impartiality, because only during court hearings judges learn the facts and the proposed solutions by parties, and only then judges rule.<sup>392</sup> (ii) Equality amongst parties, because only during court hearings parties orally present their arguments, based on their interpretation of the facts and the evidence gathered, and they propose solutions. Judges do not have chances to lead the investigation by asking certain questions or to form an opinion on the parties,<sup>393</sup> and they are called upon to personally listen to the arguments presented by the parties to, only afterwards, make decisions.<sup>394</sup> (iii) Transparency, because the orality of the hearings demand judges to resolve “facing society.”<sup>395</sup> (iv) Celerity, because judges arrive at a decision after court hearings and overcome the bureaucratic cost of writing long argumentations that might take them *days and even weeks*.<sup>396</sup> The adversarial system, therefore, allows judges *greater flexibility, proximity to the cases and the parties and, above all, transparency, because everything is resolved facing society*.<sup>397</sup>

However, the implementation of the adversarial system is viewed as requiring more human resources.<sup>398</sup> Judges connect the responsiveness of the judicial system to the increase in complaints, and therefore, the main limitation of implementing such a system is the strengthening of human resources to avoid the saturation with work of prosecutors, mediators, judges, and public defenders. Moreover, judges predict that the number of gender violence cases will continue to increase because gender awareness and recognition is only at *an early stage*.<sup>399</sup> The decentralized system implemented by the PPO also overloads prosecutors due to their physical distance to the courts.<sup>400</sup> Therefore, judges claim that when prosecutors need to appear at court hearings, one entire morning can be *lost* owing to the hearing and the commute.<sup>401</sup> Judges consider that this might result in less personalized assistance by prosecutors, an aspect that judges were able to preserve by the inclusion of the adversarial system and the reassignment of tasks. Some prosecutors also mention that with the CPCC the value of the voice of victims is increased, the approach to victims in the process is

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<sup>390</sup> Male Prosecutor, JP 003.

<sup>391</sup> Male Judge, JP 010.

<sup>392</sup> Ibid.; Male Judge, JP 011.

<sup>393</sup> Male Judge, JP 011.

<sup>394</sup> Male Judge, JP 010; Male Judge, JP 011.

<sup>395</sup> Male Judge, JP 011.

<sup>396</sup> Male Judge, JP 010.

<sup>397</sup> Ibid.

<sup>398</sup> Male Judge, JP 011.

<sup>399</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>400</sup> Male Judge, JP 011.

<sup>401</sup> Male Judge, JP 010.

improved, and their tools to assist Victims in resolving their conflicts is enhanced (e.g. the CCPC provides prosecutors with tools to impose preventive measures, and they can require those measures from judges if they cannot agree with the public defenders).<sup>402</sup>

#### 4.4.1.5. *Specialized Prosecutor Units*

Specialized prosecutor units handle, within the PPO, cases of high risk. These specialized prosecutor units are mentioned as the first and the only ones operating in Argentina.<sup>403</sup> Some prosecutors consider the specialization in domestic violence as being of major relevance for the operationalization of the specialized prosecutor units, while others consider that it is more important to have a general training background on legal provisions. However, all prosecutors agree that the work performed with Victims is more personalized, if compared to other victims; and that Victims do need a multidisciplinary assistance (referring specifically to the joint assistance performed together with OFAVyT).<sup>404</sup> Commonly, prosecutors explain that Victims have contact with up to three providers within the PPO: (i) the service provider inside the prosecutor unit assigned to investigate the case, (ii) OFAVyT, and (iii) the prosecutor, when an interview is necessary.<sup>405</sup>

Specialized prosecutor units are viewed as a response to the new paradigm of the role of Victims in the process.<sup>406</sup> The specialized aspect of the assistance provided relates to the interplay between Victims and the back-and-forth conflict of domestic violence, yet not so much with the typified crime, considered within the Argentine Criminal Code as a minor crime.<sup>407</sup> The assistance becomes, therefore, specialized and personalized to each Victim, requiring a redesign of the structure of the units, and the performance of prosecutors. For example, specialized prosecutor units try to receive Victims on time and know about the facts of a case before meeting with Victims.<sup>408</sup> This is considered a symbolic way in which to show Victims that their cases are relevant for the judicial system and to avoid lowering their expectations on the assistance they can receive at the PPO.<sup>409</sup> Moreover, it assists in building the needed trust to proceed with a proper investigation.<sup>410</sup> It also helps to avoid the saturation with explanations of Victims, who by the time they meet prosecutors, have wandered many times through other Legal Organizations (e.g. OVD), waiting and retelling their stories.<sup>411</sup> As stated by an interviewee:

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<sup>402</sup> Male Prosecutor, JP 003.

<sup>403</sup> Female Prosecutor, JP 004.

<sup>404</sup> Female Prosecutor, JP 001.

<sup>405</sup> Ibid.; Female Prosecutor, JP 004.

<sup>406</sup> Female Prosecutor, JP 001.

<sup>407</sup> Ibid.

<sup>408</sup> Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004; Female Prosecutor, JP 004.

<sup>409</sup> Female Prosecutor, JP 004.

<sup>410</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>411</sup> Ibid.

*As I said before, traditionally, judicial officers tended to 'expel' the Victim [because they treated and perceived] the Victim as a witness, the Victim as a person outside the proceedings. We try, on the contrary, to make her a part [of the process], she can suggest some things, what is known as 'open listening,' she can tell us about the entire conflict, and we do not stick to the procedural purpose, as happens when you speak with a witness that states what she saw and nothing else.*<sup>412</sup>

Some prosecutors appoint only female justice providers to lead the meetings with Victims, in order to ensure that Victims feel comfortable in going deep into their stories.<sup>413</sup> This deepening of their stories is relevant when Victims have to speak about sexual abuse or intimate facts.<sup>414</sup> Other prosecutors consider this unnecessary and sometimes detrimental to Victims since most probably they will encounter a male justice provider during the process, mostly in trial.<sup>415</sup>

Specialized prosecutor units are viewed as essential to allowing a holistic assistance.<sup>416</sup> A prosecutor mentions that each specialized prosecutor unit handles approximately 200 cases of high risk from which approximately 5 per cent require a thorough follow-up by prosecutors.<sup>417</sup> The high volume of work is viewed as an obstacle for specialized prosecutor units, explaining the need to limit specialized prosecutor units to high risk cases.<sup>418</sup> Specialized prosecutor units therefore receive cases constantly and do not adjust to the ordinary dynamics of the other prosecutor units that are assigned cases during the period they are "on-call."<sup>419</sup>

Specialized prosecutor units are perceived by prosecutors as beneficial for Victims. On the one hand, they allow for a better investigation of facts and for further consideration of domestic violence crimes that were previously ignored. On the other hand, they allow for a faster legal answer, and prosecutors can get involved and better investigate conflicts. However, some interviewees highlight that even though the strategy is important, specialized prosecutor units have not advanced much in resolving the actual conflicts of Victims.<sup>420</sup> This is argued within the overarching criticism of criminal legal provisions and their limitations in resolve conflicts<sup>421</sup>

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<sup>412</sup> Male Assistant to Female Prosecutor 004, JP 004.

<sup>413</sup> Female Prosecutor, JP 004.

<sup>414</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>415</sup> Male Prosecutor, JP 003; Male Prosecutor, JP 002.

<sup>416</sup> Male Assistant to Female Prosecutor 004, JP 004.

<sup>417</sup> Male Prosecutor, JP 003.

<sup>418</sup> Male Assistant to Female Prosecutor 004, JP 004.

<sup>419</sup> Most prosecutor units deal with domestic violence cases of low or medium risk due to the type of crimes transferred to the City, Male Prosecutor, JP 002; as one prosecutor explains: "In all prosecutor units of the City, [which] are 40 [in total], ... even though they are not specialized in domestic violence, have most of their cases on domestic violence because of the kind of jurisdiction we have [in the City]. We have transferred few crimes. Threats [which are one of the transferred crimes] occur mostly within the family context, domestic violence, family issues, couples, mothers and sons. A large percentage of prosecutors in this building deal with this same type of cases, even though we are two prosecutors, between quotation marks specialized, in this [domestic violence]," Male Prosecutor, JP 003.

<sup>420</sup> Male Prosecutor, JP 003.

<sup>421</sup> Ibid.

together with the belief that domestic violence is more related to a social and cultural problem than to a legal problem.<sup>422</sup> Prosecutors agree that it is a problem embedded in the family tradition and/or in the culture.<sup>423</sup> Moreover, they perceive having a limited capacity to act in cases that qualify as multiple crimes, and that for that reason they often lose authority to act in a case and have to transfer the case to the federal justice system.<sup>424</sup> The specialized and individualized assistance disappears in those cases.

#### 4.4.1.6. Challenges

Prosecutors point out that gathering evidence is one of the main challenges in domestic violence cases. Prosecutors mention that in terms of evidence it is still difficult to prove the alleged facts<sup>425</sup> and judges express difficulties in ruling in domestic violence cases, because the evidence is based on the words of the Victims versus the words of the accused.<sup>426</sup> Therefore, the presumption of innocence, well recognized in the Argentine Constitution, is still for many judges a right of the accused that prevails over the arguments of Victims.<sup>427</sup> As explained by a judge, *I state [in the court decision I draft, that] “despite my inner conviction,” despite all of this, I cannot change the fact that it is a “saying vs. saying,” because if not, there is no possible defence.*<sup>428</sup> It is also difficult for judges to enable and enforce the needed protection for Victims and their households.<sup>429</sup>

Prosecutors also say that, together with the gathering of evidence, their main challenge is the empowerment of Victims so as to stimulate the recovery of their decision-making capacity.<sup>430</sup> This is perceived as a joint effort together with OFAVyT and the follow-up by Victims with private physiological therapies to deal with conflicts and to sustain trial.<sup>431</sup> Prosecutors consider that explaining to Victims the limitations of criminal complaints to resolve their conflicts remains a challenge<sup>432</sup> together with the dynamics of domestic violence, because it requires them to be on constant alert as to what can potentially happen.<sup>433</sup>

Prosecutors mention that at a professional level they need to adapt their way of arguing to the type of evidence provided by Victims and to the changing ways in which judges consider and value evidence.<sup>434</sup> They also recognize the impact that their

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<sup>422</sup> Ibid.; Male Judge, JP 011; Female Judge & Specialist in Gender Issues, JP 012.

<sup>423</sup> Male Prosecutor, JP 002.

<sup>424</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 003.

<sup>425</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 003; Male Prosecutor, JP 002.

<sup>426</sup> Male Judge, JP 011.

<sup>427</sup> Ibid.

<sup>428</sup> Ibid.

<sup>429</sup> Male Judge, JP 010; Male Judge, JP 011.

<sup>430</sup> Female Prosecutor, JP 001; Male Assistant to Female Prosecutor 004, JP 004.

<sup>431</sup> Female Prosecutor, JP 001.

<sup>432</sup> Male Prosecutor, JP 003.

<sup>433</sup> Male Prosecutor, JP 002.

<sup>434</sup> Male Prosecutor, JP 003.



actions and that court decisions might have with regard to social awareness and to stimulating third parties to intervene in the problems of their neighbours.<sup>435</sup>

The enforcement of a criminal penalty is generally perceived as difficult by justice providers. A judge suggests the need for a specialized tribunal handling at the same time civil, criminal, and welfare conflicts of Victims, since all those aspects encompass a family conflict, and the implications of any decision or penalty have to be considered within a family context (e.g. incarceration of the accused may leave the family without income and with fewer chances for the accused to find a job if the accused receives a criminal sentence).<sup>436</sup> That judge is against taking some family issues to criminal court, stating that, *Not everything can be criminalized. Going to court is the last resort. I think there is no family conflict that cannot be resolved in a good way* [i.e. away from criminal courts].<sup>437</sup> A prosecutor considers the thematic in the opposite way, stating that often violent acts that are not criminalized should be criminalized: *Sometimes we experience the contrary, with situations that we perceive as violent but that do not classify under any crime, and we say: "The truth is that this should fall under a [criminal] conduct."*<sup>438</sup> Therefore, the discrepancy between accepting the intervention of the state in domestic violence cases is still alive in the judicial system.

Specialized tribunals, however, may leave the criminal aspect of complaints unattended because the criminal aspect is more arduous to prove, ending up in discrediting the rights of Victims.<sup>439</sup> For example, if a case arrives at a specialized tribunal, the judge may handle first the divorce, child support, and visitation, and neglect the fact that the partner abused the Victim for twenty years. Therefore, there is a risk, as stated by prosecutors, of ignoring the criminal aspect if specialized tribunals are implemented, which can result in leaving the abusers without a criminal record, and leaving the Victims without the right to a remedy.

Mediators, on the other hand, perceive that their main challenge is to achieve a good communication with and amongst parties.<sup>440</sup> Some mediators recall that being heard is what parties thank them for the most. Another challenge perceived is that parties accept their suggestions to agree on initiating psychological therapy (e.g. to deal with abusive behaviour and addictions, or to gain strength to leave the abusive relationship)<sup>441</sup> and to later comply with those agreements.<sup>442</sup> Moreover, the incorporation of the criminal mediation is perceived by mediators as a free, direct, smooth, and spontaneous access to justice, which becomes a custom and an element of justice.<sup>443</sup> Parties are able to communicate and deal with conflicts in a short period of time, rapidly, and they leave mediations with the feeling that they did something in

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<sup>435</sup> Male Prosecutor, JP 002.

<sup>436</sup> Male Judge, JP 011.

<sup>437</sup> Ibid.

<sup>438</sup> Male Assistant to Female Prosecutor 004, JP 004.

<sup>439</sup> Female Prosecutor, JP 001.

<sup>440</sup> Female Mediator, JP 006.

<sup>441</sup> Female Mediator, JP 008; Female Mediator, JP 009.

<sup>442</sup> Female Mediator, JP 009.

<sup>443</sup> Female Mediator, JP 007.

relation to those conflicts: parties *leave lighter; they get rid of the stress*.<sup>444</sup> Even with all the advantages mediators associate with mediations, they also acknowledge that some more serious problems require further intervention of judges.<sup>445</sup>

#### 4.4.2. Rights Awareness

This sub-section on rights awareness studies factors mentioned by justice providers that may influence the rights awareness of Victims (4.4.2.1.). Moreover it analyses the information that justice providers consider Victims should receive and understand during the legal proceedings (4.4.2.2.).

##### 4.4.2.1. Factors

Family tradition is mentioned as an important element influencing the awareness of rights of Victims. As explained by a mediator, *Basically [we have two groups]: [those who] sit and study rights, or those who receive the rights by tradition ... So, if you did not receive them by tradition or studied them, then you do not know [your rights]*.<sup>446</sup>

Some prosecutors associate the chances to increase rights awareness with the fact that Victims sustain their complaints.<sup>447</sup> Victims who sustain their complaints may leave the legal procedure understanding that *certain behaviours cause certain consequences*, but it is less likely that those Victims understand what their concrete rights are.<sup>448</sup> Those chances of rights awareness are reduced when complaints are immediately filed away.<sup>449</sup>

##### 4.4.2.2. Delivery of Information

Justice providers agree that Victims do not need to fully understand their rights. Prosecutors, however, consider it important that Victims understand the procedural consequences of their complaints to ensure their safety.<sup>450</sup> For example, prosecutors consider it important that Victims are aware, when applicable, of the moment when (i) the accused is going to be served,<sup>451</sup> (ii) criminal complaints are referred to the federal justice system, and (iii) actions are made available for them in case the accused violates preventive measures.<sup>452</sup>

There are other advantages of informing Victims of the consequences of certain procedural decisions besides ensuring safety. Some of those advantages are: (i) to understand the paths the legal procedure may follow and to dismantle myths (e.g. if Victims continue with cases, the accused will certainly go to jail), (ii) to become aware

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<sup>444</sup> Ibid.

<sup>445</sup> Female Mediator, JP 008.

<sup>446</sup> Female Mediator, JP 009.

<sup>447</sup> Male Prosecutor, JP 003.

<sup>448</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>449</sup> Male Prosecutor, JP 003.

<sup>450</sup> Female Prosecutor, JP 001; Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>451</sup> This moment is considered of major risk for Victims, Female Prosecutor, JP 001.

<sup>452</sup> Ibid.; Female Assistant to Female Prosecutor, JP 004.

of the limitations of criminal complaints to fully resolve their conflicts;<sup>453</sup> (iii) to understand the consequences that procedural decisions might trigger (e.g. chances of obtaining jail sentences in cases where the accused have criminal records);<sup>454</sup> and (iv) to understand that the violence that Victims experience is not accepted by the state,<sup>455</sup> giving a sense of accountability to their acts. Consequently, the most important awareness aspect is that Victims, after contacting prosecutors, frame the violence within illicit conduct and become aware of the boundaries of their complaints.<sup>456</sup>

Moreover, prosecutors remark on the importance of “ordering” the chaotic problems that Victims bring to the PPO.<sup>457</sup> At the moment of first meetings with Victims, prosecutors perceive that Victims are completely lost, asking them questions such as: *“What can I do?” “What happens now?” “It is like they fall off a cliff. Victims do not understand anything.”*<sup>458</sup> The challenge of first meetings at prosecutor units is to assist Victims in accommodating to the new life that complaints might produce. For example, to realize that the accused might be excluded from the house and that the Victims might need to request child support, arrange visitation, find a job, or reorganize their routines. Therefore, and as mentioned by one interviewee, *We must try to help them settle into this new paradigm that they will encounter. Because for Victims it is as if their world would end.*<sup>459</sup>

Prosecutors also perceive that Victims, when having a better understanding of their rights, start to feel less guilty. Victims feel it is no longer their fault, rather it is the law that says that the abuser acted incorrectly and it is the judicial system that believes in their stories.<sup>460</sup> As explained by a prosecutor while pointing at all the documents inside the case of a Victim, and offering an account of how Victims are walked through their cases:

*You came here [pointing at the legal document]; well you came here to testify to the Supreme Court this day, ‘Is this your signature?’ [Victim replies] ‘Yes’, ‘Well. Look. This person who signed here and this other person who signed here, believed you.’ ‘Then, you came and saw the psychologist.’ ‘Well. Look This person signed here and [therefore] believed you.’ ‘And then you came here and the person who signed this document is me: I also believe you.’*<sup>461</sup>

Prosecutors also explain that Victims may be informed about the importance of their collaboration with evidence,<sup>462</sup> though prosecutors stress that ultimately they work for Victims and not the other way around.<sup>463</sup>

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<sup>453</sup> Male Prosecutor, JP 003.

<sup>454</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002.

<sup>455</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>456</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>457</sup> Ibid.

<sup>458</sup> Ibid.

<sup>459</sup> Ibid.

<sup>460</sup> Ibid.; Male Assistant to Female Prosecutor 004, JP 004.

<sup>461</sup> Male Prosecutor, JP 002.

<sup>462</sup> Male Prosecutor, JP 003.

<sup>463</sup> Female Prosecutor, JP 001.

Mediators also state that they do not seek for parties to understand their rights, in terms of knowing what their rights are.<sup>464</sup> Mediators mainly view their task as facilitators of communication channels to assist parties to understand the components of their conflicts in order to agree on a resolution of them. Mediators stress that, to communicate with Victims and make sure they understand what is being discussed, they use techniques such as adjusting their vocabulary or asking questions a second time in different ways.<sup>465</sup> A mediator says, *If they do not understand what you are talking about, they do not understand what they are going to sign [referring to the agreement], and consequently, you cannot ask them to sign [the agreement], it is an ethical problem.*<sup>466</sup>

Mediators state that *sometimes* they have to explain to parties their rights.<sup>467</sup> This happens mostly when parties do not encounter their rights through education or the social environment. Experience with the judicial system is also mentioned as being of help for the rights awareness of Victims; and mediators say that those who already have experienced a legal procedure know their rights better.<sup>468</sup> Lawyers are mentioned by mediators as being of assistance for communicating with Victims when they do not know their rights. Moreover, when lawyers are present during mediation, often they are left in charge of informing Victims of their rights, though a significant number of lawyers lack knowledge on criminal mediation.<sup>469</sup>

Mediators perceive that some Victims get emotional when they start to understand their rights, mostly Victims who ignore their rights and perceive violence as culturally accepted (e.g. men hit women because the food is not tasty or because they are unwilling to have sexual relations).<sup>470</sup> Mediators notice a difference in the awareness of rights of women between adult women born in Bolivia and Paraguay and those born in Argentina.<sup>471</sup> Prosecutors also learn of this phenomenon when speaking to parties from Bolivia and Paraguay, who explain how accepted this dominant male role is within couples of some specific regions.<sup>472</sup> Some immigrants experience a cultural barrier in terms of women's rights, yet the number of women from Bolivia and Paraguay who claim their rights is currently increasing gradually.<sup>473</sup> Consequently, rights awareness by parties is perceived as a power equalizer because women who perceive abusive relations as being "natural" accept it until they are proved wrong.<sup>474</sup>

Rights awareness of Victims has many connotations and consequences. This study shows the connotations and consequences as expressed by prosecutors and mediators. No relevant information results from the interviews conducted with judges. Yet, interviews with judges brought another component of rights awareness, away from

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<sup>464</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>465</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>466</sup> Female Mediator, JP 009.

<sup>467</sup> Ibid.

<sup>468</sup> Female Mediator, JP 006.

<sup>469</sup> Female Mediator, JP 007; Female Mediator, JP 008.

<sup>470</sup> Female Mediator, JP 009.

<sup>471</sup> Female Mediator, JP 006.

<sup>472</sup> Male Prosecutor, JP 002.

<sup>473</sup> Ibid.

<sup>474</sup> Female Mediator, JP 006; Female Mediator, JP 009.

the relation Victim-prosecutor-mediator-accused: the lack of rights awareness by Victims may also trigger in private lawyers unnecessary prolongation of cases due to monetary interests.<sup>475</sup> The same is perceived by mediators in cases when lawyers participate in mediation.<sup>476</sup> Achieving comprehensive rights awareness for Victims turns legal provisions into a tool of empowerment, and justice providers consider it of main importance that Victims be informed of the implementation of certain legal provisions dealing with procedure that may provoke an unsafe situation for them. Moreover, prosecutors and mediators say that understanding that their problems are recognized by the law and that they have legal connotations may reduce the power disparity present in domestic violence.

### 4.4.3. Rights Enablement

This sub-section analyses the options made available to justice providers by legal provisions and organizations to influence rights enablement (4.4.3.1.). Moreover, it examines how justice providers perceive the role of Victims during the legal procedure (4.4.3.2.).

#### 4.4.3.1. Options

Justice providers perceive that options used to enforce actions and deliver justice need to adapt to the type of conflicts and the characteristics of parties. All options, however, are considered as having limitations. For example, mediation will not help if the accused uses it as an easy alternative to end complaints, and trials will be of no help if parties remain holding on to conflicts for years.<sup>477</sup> A prosecutor mentions the importance of returning conflicts to Victims because they are the damaged parties.<sup>478</sup> Therefore, when thinking of ways to resolve conflicts, the same prosecutor explains that they need to evolve around the recovery of Victims and not around the punishment of the accused. Mediation is perceived as an option in line with this way of understanding conflict resolution.<sup>479</sup>

A prosecutor explains that conflict resolution equally depends on the capacity of the judicial system to enforce and on the decision of Victims and accused to stop the illicit conduct.<sup>480</sup> A judge adds that the presence of an impartial authority in conflicts is important mostly in conflicts that have been going on for years and that parties have been unable to resolve.<sup>481</sup> The same judge explains that he corroborated this

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<sup>475</sup> Male Judge, JP 011.

<sup>476</sup> Female Mediator, JP 009.

<sup>477</sup> Male Judge, JP 011.

<sup>478</sup> Male Prosecutor, JP 003.

<sup>479</sup> Ibid.; in 2014, a new criminal code project was drafted to replace the current Criminal Code. The text of the criminal code project gives relevance to alternative dispute resolution mechanisms over classic application of jail sentences. The criminal code project incorporates arts 22, 27–30, with alternatives by which offenders commit to actively repair damage done (e.g. paying a sum of money, performing activities of public utility), see Comisión para la Elaboración del Proyecto de Ley de Reforma, *Anteproyecto Código Penal*.

<sup>480</sup> Male Prosecutor, JP 003.

<sup>481</sup> Male Judge, JP 011.

perception by discussing it with colleagues from civil courts.<sup>482</sup> His colleagues expressed the view that most cases get resolved when judges hold evidentiary hearings. Prosecutors also agree with that statement, and express a positive difference when parties actually encounter the maximum authorities in each stage of the legal procedure (i.e. judges, prosecutors, and/or public defenders).<sup>483</sup>

#### 4.4.3.1.1. Preliminary Investigation Stage

Prosecutors state that during the preliminary investigation stage they need to *assess facts objectively, gather evidence, notify the accused, and see the arguments of the defence*.<sup>484</sup> Prosecutors first meet Victims to assess the alleged facts objectively and to see what type of evidence is available to support the facts and to prove the violent context (i.e. the environment in which Victims are immersed). Prosecutors mention two sets of examples of gathering evidence to enable the investigation. First, complaints by Victims based on threats can be supported with the testimony of witnesses who heard those threats.<sup>485</sup> Second, complaints by Victims based on threats, yet with no witnesses to those threats, can be supported with contextual evidence, such as: (i) colleagues testifying on how tense Victims were right after the alleged threat;<sup>486</sup> (ii) doormen of buildings testifying on how Victims left the premises (e.g. crying or shouting);<sup>487</sup> (iii) public cameras capturing events, if occurring in the public sphere;<sup>488</sup> (iv) lists of calls made and received from the telephones and cell phones of Victims;<sup>489</sup> and (v) transcripts of text messages received by the cell phones of Victims.<sup>490</sup> Prosecutors view the gathering of evidence as a joint task between prosecutor units, OFAVyT, Victims, and other organizations. In the task of gathering evidence, prosecutors view as a main challenge that the words of Victims are the main evidence that supports complaints.<sup>491</sup>

First meetings are therefore mentioned as very important because they are the moment when prosecutors ask Victims questions to find out all the different ways available to gather evidence (e.g. if a Victim received a text message with another threat, they ask them when this happened in order to require the transcripts of all text messages received by their cell phone on that exact date).<sup>492</sup> Prosecutors may also require the coordination of tasks with other organizations (e.g. schools, and the Council for the Rights of Children and Adolescents) and communicate to obtain contextual evidence and to provide Victims with adequate support to continue with

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<sup>482</sup> Ibid.

<sup>483</sup> Ibid.; Female Prosecutor, JP 004; Male Prosecutor, JP 002.

<sup>484</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>485</sup> Ibid.

<sup>486</sup> Ibid.

<sup>487</sup> Female Prosecutor, JP 001.

<sup>488</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid.

<sup>491</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004.

<sup>492</sup> Female Assistant to Female Prosecutor, JP 004.

their complaints. These first meetings also assist prosecutors in granting preventive measures for Victims. Moreover, during first meetings, prosecutors try to prevent the re-victimization of Victims and stress the importance of performing all needed activities during those first meetings so as to avoid subsequent meetings. Victims are ideally referred to OFAVyT after first meetings with prosecutor units to receive multidisciplinary assistance. Some prosecutors consider that the multidisciplinary assistance could be better if incorporated during first meetings, to improve the speed and quality of assistance.<sup>493</sup>

The emotional capacity of Victims to endure the preliminary investigation stage is mentioned as a key element in enabling conflict resolution and as a challenge.<sup>494</sup> Consequently, prosecutors need to prepare a strong case, complying with the procedural requirements and the emotional capacity of Victims.<sup>495</sup> Prosecutors question the extent to which the state can contribute to the life of Victims, because *Fifteen years of violence cannot be changed with one complaint and a meeting with OFAVyT*,<sup>496</sup> and view that even economic and social resources available to Victims cannot compensate a lack of emotional capacity (e.g. psychological dependency). Moreover, when Victims want to withdraw from the preliminary investigation stage prosecutors can continue, but with reduced chances of gathering pertinent evidence, because prosecutors cannot use the police power to oblige Victims to testify.<sup>497</sup> The voluntary participation of Victims is hence essential during the preliminary investigation stage.<sup>498</sup>

Prosecutors understand that criminal complaints may enable solutions for some aspects of the conflicts, though not solutions to the entire problem. As one prosecutor explains:

*I think that most cases [that access the PPO] end better. Though better is not necessarily because the [accused] is sentenced by court, but because at least [the Victim] knows that if she submits a criminal complaint then the [judicial system]: removes [the accused] from the house for a three months-period and gives [the Victim] a panic-button that she can use if the abuser returns, as it happened in one of my cases. From that point of view, I think, it does give Victims something, but it does not give them something concrete, and it cannot solve a problem between people because ... my capacities are to pursue a criminal complaint of a specific event, beyond considering all this paradigm [i.e. referring to how Victims are considered and the multidisciplinary approach] and the whole issue. [My abilities] are not to solve the conflict, though of course we try that the criminal complaint does not further deteriorate the conflict between parties.*<sup>499</sup>

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<sup>493</sup> Female Prosecutor, JP 004.

<sup>494</sup> Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004.

<sup>495</sup> Female Prosecutor, JP 001.

<sup>496</sup> Ibid.

<sup>497</sup> Ibid.

<sup>498</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>499</sup> Male Prosecutor, JP 003.

Some prosecutors expressly try to empower Victims during the preliminary investigation stage.<sup>500</sup> When Victims submit their complaints they might be in a situation of vulnerability and submissive to the accused, but as the process continues, prosecutors sense that some Victims start to notice that the accused is being observed, judged, and investigated by the state.<sup>501</sup> Victims find the *doors of the prosecutor units opened for their claims and their wills are heard*.<sup>502</sup> Consequently, the process itself (i.e. Victims being heard and their observations that there are legal answers to their problems) is considered as empowering Victims because, as explained by a prosecutor, *Victims see an organizational option to finish with violence*.<sup>503</sup>

Prosecutors on some occasions suggest alternative dispute resolution mechanisms before requesting trial.<sup>504</sup> For that suggestion, prosecutors consider the facts, the power relation between the parties, and the defence (i.e. accused and public defender). Prosecutors may also request the intervention of OFAVyT and refer Victims for further psychological assistance, to increase the strength of Victims.<sup>505</sup> This will *somehow empower and make them able to face different situations*.<sup>506</sup>

#### 4.4.3.1.2. Alternative Dispute Resolution Mechanisms

Mediation and probation are well received by most justice providers and considered a better means to resolve conflicts if compared to punishment. A prosecutor explains that those mechanisms should be proposed always as a first option because they give parties a chance to reconcile, and they place on the accused the responsibility to actively propose ways to repair the damage.<sup>507</sup> However, and as stated by the Argentine Supreme Court in the case “Góngora,” those alternatives lose their efficiency when the accused re-offends, and most justice providers agree that at that point the only available option is to punish.<sup>508</sup>

##### 4.4.3.1.2.a. Mediation

##### 4.4.3.1.2.a.i. Approach

Prosecutors consider that mediation can enable conflict resolution only when Victims are sufficiently empowered to face the accused,<sup>509</sup> or in minor conflicts that can be resolved by informing the accused of the expected behaviour.<sup>510</sup> Therefore,

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<sup>500</sup> Genoveva Cardinali, “Violencia doméstica.”

<sup>501</sup> Male Assistant to Female Prosecutor 004, JP 004.

<sup>502</sup> Ibid.

<sup>503</sup> Ibid.

<sup>504</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004.

<sup>505</sup> Female Assistant to Female Prosecutor, JP 004; Male Prosecutor, JP 003.

<sup>506</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>507</sup> Male Prosecutor, JP 003.

<sup>508</sup> Ibid.; Female Assistant to Female Prosecutor, JP 004.

<sup>509</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 003; Male Prosecutor, JP 002.

<sup>510</sup> Female Prosecutor, JP 001.



prosecutors believe that mediation might be good mainly for cases that show isolated violent events, but not for cases that entail a history of domestic violence.<sup>511</sup>

Mediators believe that mediation enables conflict resolution because it triggers good communication without dominant external intervention.<sup>512</sup> Mediation is viewed as effective only when parties understand why they are participating, and in these cases, mediation also improves the capacity of people to resolve their conflicts.<sup>513</sup> Mediators do not, however, generally distinguish between the types of cases that are good to submit to mediation.

Judges consider mediation (and probation) as more effective alternatives to resolve conflicts if parties participate by their own will.<sup>514</sup> A judge considers all agreements that are alternative to trials more beneficial for conflict resolution, since the consequences of court decisions always entail a detriment for the parties.<sup>515</sup> This also applies to resolving minor domestic violence conflicts because, on the one hand, if cases are dismissed, abusers increase their power of domination and violence might increase; and, on the other hand, if a sentence is granted, even when short as applicable for threats and harassment, and the accused goes to jail, the household is deprived of an income.<sup>516</sup> The criminal record may also decrease the chances for the accused to afterwards secure work.<sup>517</sup>

#### *4.4.3.1.2.a.ii. Conflict Resolution*

Mediation may assist parties in elaborating their own agreements, and this is viewed as beneficial in enabling conflict resolution, because only the parties know what happened<sup>518</sup> and the best options to resolve their conflicts.<sup>519</sup> The participation of mediators serves to ensure that agreements are legal and signed with the free consent of the parties.<sup>520</sup> Prosecutors explain that mediation is most of the time proposed by the defence<sup>521</sup> and approximately 60 per cent of scheduled cases actually reach mediation.<sup>522</sup> Mediators, under the current organizational structure, cannot schedule their mediations and they perceive this as a disadvantage, because they cannot build strategies to obtain a higher attendance at mediation (e.g. reminding parties a day prior to their mediation).<sup>523</sup> Moreover, mediators express that they commonly encounter parties who are confused as to why they are there and about the purpose of the

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<sup>511</sup> Ibid.

<sup>512</sup> Female Mediator, JP 009.

<sup>513</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>514</sup> Male Judge, JP 011.

<sup>515</sup> Ibid.

<sup>516</sup> Ibid.

<sup>517</sup> Ibid.

<sup>518</sup> Ibid.

<sup>519</sup> Female Mediator, JP 006; Female Mediator, JP 007; Female Mediator, JP 008.

<sup>520</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>521</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004.

<sup>522</sup> Female Mediator, JP 008; Female Mediator, JP 009.

<sup>523</sup> Female Mediator, JP 009.

mediation.<sup>524</sup> Many times mediators explain that parties receive wrong information on what the mediation is about, and other times the accused pretends not to know why they are there, expressing surprise for having received such a complaint.<sup>525</sup>

Mediators indicate that parties appreciate the fact that mediation is voluntary and confidential.<sup>526</sup> Parties most of the time want to actively participate in mediation after they learn about those two aspects. However, many external elements seem to affect the appearance of parties in mediation and the lack of economic resources is one of them. Mediators explain that most parties that mediate at the PPO belong to *lower classes*, and they have encountered situations in which the parties could not attend mediation because they lacked the money to pay for transportation.<sup>527</sup> Additionally, some parties cannot afford to lose working hours.

Agreements are reached in 80 to 90 per cent of the cases that undergo mediation at the PPO.<sup>528</sup> Mediators believe that the high percentage of agreements responds to the fact that mediation uses tools that better incorporate the desires of the parties. Consequently, the parties achieve agreements that are more feasible for them to comply with, increasing the chances of conflict resolution. Mediators also note limitations and commonly observe that parties, on the one hand, *fable [play] with the fantasy that they are perfect*<sup>529</sup> and, on the other hand, expect mediators to automatically solve their problems. As expressed by one mediator, *People think that we have a magic wand; that they come here and that we fix their entire world: their economy, their homes, and their families.*<sup>530</sup> Therefore, mediators have to ensure that parties suggest options that are realistic with regard to their capacities and resources, and that they frame their expectations on what can be obtained with mediation. Mediators also perceive that the judicial system is imperfect by itself to provide people with all the tools necessary to resolve conflicts, and that to arrive at a stage in which the parties understand the roots of their conflicts multidisciplinary assistance is required.<sup>531</sup> Mediators, however, explain that they seldom provide referrals and that most of the time they are made upon request of the parties.<sup>532</sup>

Mediators explain that they regularly experience the situation where parties start mediation by talking about the problems that brought them to mediation (e.g. a threat or a non-compliance with child support). They add that during mediation parties raise the underlying conflicts (e.g. addictions that deprive the accused from complying with child support).<sup>533</sup> In those situations, mediators incorporate the underlying conflicts into the conversations (e.g. compromise with the accused to pay child support and to

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<sup>524</sup> Female Mediator, JP 008.

<sup>525</sup> Ibid.

<sup>526</sup> Female Mediator, JP 006.

<sup>527</sup> Ibid.

<sup>528</sup> Male Mediator, JP 005.

<sup>529</sup> Female Mediator, JP 008.

<sup>530</sup> Ibid.

<sup>531</sup> Female Mediator, JP 009; Female Mediator, JP 006.

<sup>532</sup> Female Mediator, JP 007; Female Mediator, JP 008.

<sup>533</sup> Female Mediator, JP 006; Female Mediator, JP 007; Female Mediator, JP 008.

comply with a rehabilitation programme) and the presence of lawyers may be helpful, because parties then receive legal assistance.<sup>534</sup>

Mediators do not judge whether what the parties say is true or false, but focus on giving the chance to the parties to express themselves and listening to what they say.<sup>535</sup> Moreover, they do not explore the past and the facts, rather they encourage the parties to pursue future paths (i.e. from this day onwards).<sup>536</sup> Their task is to equalize the parties, leaving aside their roles as accused and accuser.<sup>537</sup> Mediators learn about the tradition and culture of the parties during mediation, and this allows for a better understanding of the conflicts they are facing.<sup>538</sup>

Mediators explain that they are trained to look at the positive aspects of conversations, since these aspects may lead to agreements.<sup>539</sup> For that purpose, they work with the *art of questioning* to promote communication between the parties.<sup>540</sup> For example, they may know when it is suitable to raise open-ended questions, closed-ended questions, and circular questions;<sup>541</sup> or when to probe and when to place the parties in hypothetical situations in order to understand how another party can perceive differently the same facts.<sup>542</sup> Questions are also used by mediators to understand how the parties perceive conflicts, because regularly conflicts derive from communication problems between the parties.<sup>543</sup> One of the main lessons of mediation is that parties become aware of the fact that to facilitate agreements it is valuable to communicate with the other parties, exteriorizing their likes and dislikes and what they want and what they do not want.<sup>544</sup>

Mediators also use techniques to help the parties individualize their conflicts. Therefore, they refer to parties as Mr. or Ms.,<sup>545</sup> and ask the parties to refer to each other by their names, instead of referring to each other as “she,” “he,” or “that one.”<sup>546</sup> In addition, mediators work with possible hypotheses and never assume, judge, or take a position.<sup>547</sup> They work in reducing the expectations parties have of the

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<sup>534</sup> Female Mediator, JP 006.

<sup>535</sup> Ibid.; Female Mediator, JP 009.

<sup>536</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>537</sup> Female Mediator, JP 009.

<sup>538</sup> Female Mediator, JP 006.

<sup>539</sup> Ibid.

<sup>540</sup> Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009; Female Mediator, JP 006.

<sup>541</sup> For a note on how to use circular questions, see Cobb, “Empowerment and Mediation,” 256.

<sup>542</sup> Female Mediator, JP 008.

<sup>543</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>544</sup> Female Mediator, JP 006; Male Mediator, JP 005; Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009.

<sup>545</sup> Female Mediator, JP 007; Female Mediator, JP 008.

<sup>546</sup> Female Mediator, JP 007.

<sup>547</sup> Ibid.

judicial system and in making them understand that agreements and solutions are in their hands.<sup>548</sup>

Mediation is closed with an agreement when conditions for settlement are given,<sup>549</sup> and when mediators understand that the parties are able to settle the needed elements to start resolving their conflicts.<sup>550</sup> The conditions for settlement are given when the parties understand why they are there, when the parties can freely express themselves regardless of the presence of the other party, when the parties agree based on resolving conflicts and not based on other logistical conveniences (e.g. having no time to continue with the legal case), when the agreements are legal,<sup>551</sup> and when they clearly understand what they are signing and the implications.<sup>552</sup> Mediation is viewed as having the potential to become an alternative frequently used by parties that had the chance to experience it and realized that it is a free option available at the PPO that does not require legal representation.<sup>553</sup>

#### 4.4.3.1.2.a.iii. *Time and Space*

Mediators view conflicts as being dynamic, and, therefore, the ideal time for mediation to be performed varies depending on the stage of the conflicts.<sup>554</sup> Nevertheless, they do see a difference in the communication between parties during first mediations and follow-up mediations.<sup>555</sup> A period between mediations gives the parties the time to process their problems and the options and elements that emerged during the first mediations. As mentioned by a mediator:

*Parties say during mediation: 'Now that I listen to myself, I cannot understand how I got into this situation. Because what I have done was out of stupidity, out of a moment of anger.' Then it is during mediation that they [i.e. parties] start to realized what they have done, what were their intentions, if there was really a desire to submit a criminal complaint, because we do not have to forget that here we are talking about criminal cases, contraventions.'*<sup>556</sup>

Moreover, mediators mention that parties attend mediation more willingly to agree when Victims alert the accused about the submission and reasons for complaints, instead of their learning about complaints from police officers.<sup>557</sup> Conflict resolution can also be considered as a process that can be nourished from previous stages.

Mediators say it would be beneficial to have the possibility to schedule mediations according to the needs of the conflicts and not according to legal procedural needs.

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<sup>548</sup> As explained by a mediator, it is a common experience that the parties ask them at the beginning of mediation: "So, tell me, what is the solution?" or "What shall we do?", Female Mediator, JP 008; Female Mediator, JP 007.

<sup>549</sup> Female Mediator, JP 009; Female Mediator, JP 006.

<sup>550</sup> Female Mediator, JP 009.

<sup>551</sup> Female Mediator, JP 006.

<sup>552</sup> Female Mediator, JP 009.

<sup>553</sup> Female Mediator, JP 007.

<sup>554</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>555</sup> Female Mediator, JP 009.

<sup>556</sup> Female Mediator, JP 006.

<sup>557</sup> Ibid.; Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009.

They explain that mediations are often set when the time for the preliminary investigation stage is about to expire, and prosecutors need to decide either to file away the complaint or to request trial.<sup>558</sup> Other times mediators are left with limited time to mediate (e.g. when the PPO or the public defender wants to *prepare* their party for mediation and take part of the time assigned for mediation).<sup>559</sup> A fixed or limited period of time is perceived as detrimental to the purpose of achieving agreements because mediation has to be flexible to adjust to the times the parties need to develop agreements.<sup>560</sup>

A calm and organized space is needed for the performance of mediators and to compensate all emotions brought by the parties.<sup>561</sup> As mentioned by a mediator, parties *get emotional, cry, shout, curse, relax, get emotional again, and so on*, and mediators need to focus all their attention on the parties and not on finding a calm and organized space to perform the mediation (e.g. having to move from one space to another or waiting for a room to become available).<sup>562</sup>

#### 4.4.3.1.2.a.iv. Stereotypes

Mediators observe that mediation helps remove stereotypes associated with criminal complaints (e.g. the presence of very serious crimes, the presence of a “bad person” who harmed a “good person”).<sup>563</sup> Some mediators consider that “victims” many times are those who submitted complaints first.<sup>564</sup> In addition, female mediators also often have the experience that male accusers say, “*All against me.*”<sup>565</sup> Mediators say that men more frequently appreciate that mediators listened to them and express that that was the first time they were heard.<sup>566</sup> In general, parties are perceived as leaving mediation more relieved and thanking mediators.<sup>567</sup>

Mediators explain experiencing Victims telling them that the system followed a standardized procedure, based on created stereotypes and not on their needs.<sup>568</sup> Some Victims further consider that the applicable measures do not respond to their requests or to their problems. As stated by a mediator, *It is as if providers hit “play.”*<sup>569</sup> Mediators perceive that some Victims make up threats or harassments to enable quick child

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<sup>558</sup> Mediators observe that in those situations they are rushed to sign agreements which might need two or three meetings instead of one, Female Mediator, JP 006; Female Mediator, JP 009.

<sup>559</sup> Female Mediator, JP 009.

<sup>560</sup> Ibid.

<sup>561</sup> Female Mediator, JP 006; Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009.

<sup>562</sup> Female Mediator, JP 006.

<sup>563</sup> e.g. mediators often experience that the accused start mediation by clarifying that they are not bad people, that they are not thieves or murderers, *ibid.*; Female Mediator, JP 009.

<sup>564</sup> Female Mediator, JP 006.

<sup>565</sup> Female Mediator, JP 009.

<sup>566</sup> Female Mediator, JP 006.

<sup>567</sup> Female Mediator, JP 007; Female Mediator, JP 008.

<sup>568</sup> Female Mediator, JP 006; Female Mediator, JP 007; Female Mediator, JP 008; Female Mediator, JP 009.

<sup>569</sup> Female Mediator, JP 009.

support with criminal complaints or actually are the abusers.<sup>570</sup> Mediators, therefore, consider it difficult to find components that are systematically repeated in “successful” mediations.<sup>571</sup> For example, when asked about using mediation for domestic violence cases, mediators mention that each situation needs to be analysed separately because they have seen mediation work in domestic violence.<sup>572</sup> Moreover, they react against legal provisions that prohibit mediation in every domestic violence complaint.

#### 4.4.3.1.2.a.v. *Self-Esteem and Empowerment*

Mediators perceive a significant change in the attitudes of parties when mediation is over. For example, as one interviewee states in relation to the attitude of Victims before and after mediation, if the *assisted was a chicken* [by the time mediation started], *she becomes a pheasant* [by the end of the mediation].<sup>573</sup> The same title of “victim” and “accused” already empowers victims, and mediators perceive that in general victims attend mediation more confident than the accused.<sup>574</sup>

Mediators, amongst all interviewees, are those who most frequently use the term “empowerment of Victims.”<sup>575</sup> In general, they perceive that Victims increase their empowerment as a result of mediation. Mediators consider that the fact that they do not speak about “crimes” or “evidence,” but that they focus on communication and agreement, empowers Victims to express themselves and be heard in a context that does not victimize them.<sup>576</sup> Parties understand with mediation that their voices are needed in order to achieve agreements.<sup>577</sup> For example, a mediator recalls undertaking mediation where the male party could not understand that the female party considered the relationship over.<sup>578</sup> The male party constantly repeated that it was impossible that she did not want to be with him because he loved her and helped her. The mediator tried to offer him many examples to make him understand that her desire was different, and later asked him how he would feel if he were changing a tire of his car and someone came to offer help and after he declined that help, the other person asked him again and again. The mediator further explains that after working with this idea of accepting the desire of the other person for five times, the male stated that he would not feel comfortable and understood that the female party was not feeling comfortable either. An agreement was signed.

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<sup>570</sup> Female Mediator, JP 008; Female Mediator, JP 009.

<sup>571</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>572</sup> Female Mediator, JP 006; Female Mediator, JP 009.

<sup>573</sup> Female Mediator, JP 009.

<sup>574</sup> Ibid.

<sup>575</sup> Male Mediator, JP 005; Female Mediator, JP 006; Female Mediator, JP 009; Female Mediator, JP 007.

<sup>576</sup> Male Mediator, JP 005.

<sup>577</sup> Ibid.; Female Prosecutor, JP 001.

<sup>578</sup> Male Mediator, JP 005.

## 4.4.3.1.2.b. Probation

Probation is considered an efficient alternative dispute resolution mechanism to enable the resolution of minor crimes, such as those handled by the PPO.<sup>579</sup> Minor penalties apply to minor crimes<sup>580</sup> and most of the time, unless the accused is a re-offender, judges rule a punishment suspension.<sup>581</sup> Under this scenario, justice providers highlight the relevance of probation due to the lack of other applicable penalties. Prosecutors explain that probation gives them chances to allow the suspension of trials on the condition that the accused undergoes counselling (e.g. to handle addictions or violent behaviours),<sup>582</sup> and provide Victims with preventive measures (e.g. a restraining order).<sup>583</sup> Counselling aims at handling the roots of problems, while preventive measures aim at handling the consequences of problems.<sup>584</sup> If the accused violates probation, cases are re-opened and prosecutors can request trial.<sup>585</sup>

Prosecutors believe that half of the accused comply with probation,<sup>586</sup> though they are not fully aware whether probation contributes to a decrease in re-offending. The violations they witness normally occur after some months and not immediately after probation.<sup>587</sup> Prosecutors add that probation does not bring negative consequences for the cases because the time-lapse does not affect the evidence, since Victims remember the occurrences even after six months, nor the reports (such as those drafted by OFAVyT or OVD) since they are based on objective professional assessments that do not change with time.<sup>588</sup>

## 4.4.3.1.3. Trial

A judge mentions the evidence as being the main element needed to enable court decisions, beyond the before-mentioned limitations of a court decision to resolve conflicts.<sup>589</sup> Moreover, some of the consequences that a court decision might bring are perceived as creators of new conflicts, rather than enabling the resolution of conflicts. A judge recalls the following experience: *The son [of the abuser] of seventeen years old, or a little less, came and said "My dad is in jail and during the last twenty days no money came into this house."*<sup>590</sup> Another element mentioned is that civil judges frequently deny visitation until criminal cases are closed.<sup>591</sup>

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<sup>579</sup> Male Prosecutor, JP 002; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004; Female Prosecutor, JP 001.

<sup>580</sup> i.e. crimes with a maximum of three years of jail sentence.

<sup>581</sup> Male Prosecutor, JP 002.

<sup>582</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>583</sup> Male Prosecutor, JP 002.

<sup>584</sup> Ibid.

<sup>585</sup> Female Assistant to Female Prosecutor, JP 004; Male Prosecutor, JP 002.

<sup>586</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>587</sup> Ibid.; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 001.

<sup>588</sup> Male Prosecutor, JP 002.

<sup>589</sup> Male Judge, JP 011.

<sup>590</sup> Ibid.

<sup>591</sup> Ibid.

Many times judges have to make decisions during court hearings, based on the testimony of Victims regarding the accused, and the reports from OVD.<sup>592</sup> The struggle they face is that in many cases if they accept the *vague facts* brought forward by Victims, the accused is left without possible defence.<sup>593</sup> Often judges encounter Victims with sufficient evidence for them to make a decision, but the Victims do not want to present their testimony in hearings and want to abandon the cases. For example, as stated by a judge on the reaction of a Victim when asked to testify:

*Interviewee: [Victim]: "No, but I do not want to testify." [Judge]: "Well, look, the Dr. [referring to the public defender] will ask you questions, and you should try to remember ..."* [Victim]: *"No, but I do not want to testify." And I have to tell her, that withholding the information demanded by the opposing party is also a crime.*

*Interviewer: I see.*

*Interviewee: And there, and it gave me this feeling, I mean ... [Victim]: "And I do not want to talk because, you know, he has forgiven me." You understand, no?*

*Interviewer: Yes, everything is confused ...*

*Interviewee: [Victim]: "He has forgiven me. I am the one to blame for submitting the complaint and bringing him here." <sup>594</sup>*

The same judge decided to dismiss the action in the previous example after being unable to receive the voluntarily testimony of the Victim. With this type of experience the judge considers that no solution is possible because even if he had decided to incarcerate the accused, as it often happened, the Victim would have been the first one visiting him in jail and requesting the judge to dismiss the action. The judge further mentions difficulties in providing a solution for such complex problems because from the legal standpoint he has limited recourses. It is worth noting that the results provided under this section represent the voice of one judge who was trained within the traditional paradigm on how facts need to be evidenced in order to grant a court decision without violating the constitutional rights of the accused. More evidence needs to be provided in order to have a broader spectrum of perceptions.<sup>595</sup>

A judge explains that, differently to what occurs in other jurisdictions (e.g. the province of Buenos Aires), all hearings are taken by judges, who are the maximum authority.<sup>596</sup> Parties are surprised when they learn that their evidence will be heard directly by a judge, and the latter is perceived as assisting in placing parties within their responsibility in the conflicts. However, the same judge believes that the best way to enable conflict resolution in domestic violence cases is to prevent conflicts from

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<sup>592</sup> Ibid.

<sup>593</sup> Ibid.

<sup>594</sup> Ibid.

<sup>595</sup> The type of crime is also mentioned as a contributing factor for judges when rendering decisions. Currently, City Tribunals have jurisdiction to hear (amongst other cases) cases on threats; and when threats also involve physical injuries, the cases are referred to federal courts. Physical injuries will eventually be transferred to the City, and judges explain that when this happens they will have stronger evidence because a medical record on physical injuries gives judges something to support a jail sentence, even when that fact is "unfortunate," *ibid.*

<sup>596</sup> Ibid.



occurring (e.g. women leaving their partners immediately after the first violent act occurs).<sup>597</sup> It is interesting to note the common understanding on the extent to which the judicial system can actually help. The help is perceived as limited and therefore the option available to enable conflict resolution is not related to a fair trial, but to tackling prevention, multidisciplinary assistance, and alternative dispute resolution mechanisms.

#### 4.4.3.1.4. Lawyers

Mediation, in order to take place, requires the presence of the parties, the mediator, and the public defender (or evidence that the accused spoke with the public defender earlier).<sup>598</sup> Victims are not required to have a lawyer or to have had prior contact with one. Therefore, in some mediations, mediators experience the need to equalize the positions of the accused and the Victims due to the lack of representation of Victims.<sup>599</sup> Mediators comment that on some occasions Victims come to mediation with someone from the multidisciplinary team of OFAVyT who is not a lawyer, and that they have to double their efforts to ensure equalization.<sup>600</sup> Lawyers participating in mediation are sometimes perceived even as being detrimental to the parties in resolving their conflicts within this environment. This occurs mostly when lawyers ignore the purpose of criminal mediation and are trained to litigate. Therefore, lawyers motivate litigation instead of working with the elements of acceptance, support, and partial surrender needed to enable mediation agreements.<sup>601</sup> Mediators perceive that many times the risk of having lawyers encouraging Victims to go to trial is that lawyers do not explain to Victims the costs they will encounter (in terms of money, time, and emotion) while obtaining perhaps similar or worse results.<sup>602</sup> In one example, a mediator mentions that there was a need to stop the mediation and explain to the lawyer that that behaviour was blocking the chances of reaching an agreement. In another example, the lawyer was obstructing the chances of the Victim to voice her desires to resolve her conflict.<sup>603</sup>

Mediators say, nonetheless, that having collaborative lawyers in mediation may enable comprehensive agreements that incorporate a settlement for most of the elements that conflicts entail (e.g. stopping a threat, changing the way of communication, and setting visitations). These private agreements are then taken by lawyers to civil courts, to obtain judicial approval.<sup>604</sup> This rarely occurs when parties attend mediation without lawyers, since the parties are not legally assisted and mediators cannot occupy that role.

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<sup>597</sup> Ibid.

<sup>598</sup> Female Mediator, JP 006.

<sup>599</sup> Ibid.

<sup>600</sup> Ibid.; Female Mediator, JP 009.

<sup>601</sup> Female Mediator, JP 009; Female Mediator, JP 007.

<sup>602</sup> Female Mediator, JP 009.

<sup>603</sup> Female Mediator, JP 006; Female Mediator, JP 009; Female Mediator, JP 008; Female Mediator, JP 007.

<sup>604</sup> Female Mediator, JP 006.

Victims who cannot afford a lawyer need to approach, for example, an NGO or the bar association.<sup>605</sup> Those attorneys, however, might not be specialized, and judges explain the importance of specialized lawyers to protect the rights of Victims in civil and criminal courts.<sup>606</sup> Judges agree that having an attorney who wants to litigate does not contribute to conflict resolution.<sup>607</sup> For example, conflicts that could be resolved in a matter of days sometimes last up to three years mostly as a result of the money lawyers can earn.<sup>608</sup> In family matters, moreover, the emotional component can easily increase if the social context motivates parties to fight and if parties encounter lawyers who encourage litigation. As stated by a judge:

*What is the need to bring everything to a lawyer? [To bring] everything to a fight? In family issues what matters is what you think, what your environment thinks. When you attend a class reunion and your classmates tell you "Oh, yes, of course." You see, everything is like this, and if on top of that you do not have a rational lawyer ...*<sup>609</sup>

The detriment of motivating parties to fight can mostly trigger unwanted and ignored consequences.<sup>610</sup>

#### 4.4.3.2. Role of Victims

Victims are perceived by almost every justice provider as having an important role in enabling conflict resolution. On the one hand, it is they who provide all needed evidence and sustain their presence during the preliminary investigation stage and trial.<sup>611</sup> On the other hand, and most importantly, it is they who decide to end and to avoid future violent relations. Prosecutors perceive that they cannot require Victims to have an active role if it is a burden for them,<sup>612</sup> and they allow Victims to decide the extent of their participation. Most interviewees agree that prosecutors are at the service of Victims and not Victims at the service of the PPO.<sup>613</sup> Ideally, Victims should meet once with OVD or any other access point to submit complaints and should be called to meet once with the prosecutor units to present all facts and evidence needed for them to perform the investigation.<sup>614</sup> The meetings with OFAVyT are not considered, by justice providers, as part of the spectrum of meetings serving a procedural purpose.

The personal situation of Victims (i.e. their personal capacity to make free decisions and their cultural perception of conflicts) is viewed as essential for a sustainable

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<sup>605</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>606</sup> Ibid.

<sup>607</sup> Male Judge, JP 011.

<sup>608</sup> Ibid.

<sup>609</sup> Ibid.

<sup>610</sup> Male Prosecutor, JP 002; Male Judge, JP 011.

<sup>611</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>612</sup> Male Prosecutor, JP 003.

<sup>613</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 003; Female Assistant to Female Prosecutor, JP 004.

<sup>614</sup> Male Prosecutor, JP 003.

conflict resolution, and the judicial system experiences limitations to fully resolving conflicts. As explained by a prosecutor:

[Solving the conflict depends on a] *personal evolution, which is a space where the state cannot intervene. Through OFAVyT we try to persuade them to start [psychological] therapy, [we try to contribute to their] recovery of the sense of 'one-self,' which is referred to as 'empowering victims.'* [That is to say], *that they regain their capacity to make decisions and to gain tools; since they did not have those tools in the past, to have them for the future.*<sup>615</sup>

Prosecutors perceive, however, that many elements assist Victims to sustain the process. Those elements are: (i) the multidisciplinary assistance by OFAVyT, and the potential that Victims will continue with psychological assistance;<sup>616</sup> (ii) the way providers show how important their cases are to the judicial system, for example, by receiving them on time, by being received by someone with a high hierarchical level within prosecutor units;<sup>617</sup> and (iii) the way providers approach the complex harm and problems of Victims that they bring to the judicial system, which are much more complex than dealing with, for example, victims of robbery.<sup>618</sup> The problem is complex due to the psychological dependency of Victims. In addition, abusers change attitudes once they perceive a risk of losing the Victims. Furthermore, most of the time, Victims request assistance from the state after feeling a real threat, and not after the first episode of abuse.<sup>619</sup> Abusers also use every tool possible to strengthen their superior position with regard to Victims. They take recourse to, for example, saying such things as, “I know it better,” “You do not understand how the justice/police works,” “Nobody will believe you,” “I have a friend in the police,” and “I have a friend who is a lawyer.”<sup>620</sup> Prosecutors therefore need to develop a trustful environment for Victims to exteriorize their conflicts,<sup>621</sup> and they need to know how to “read” the complaints presented sometimes as a representation of many other conflicts that evolve around the ones that triggered the original complaints.<sup>622</sup>

Prosecutors count on the assistance of OFAVyT to understand cases where Victims decide to withdraw their complaints.<sup>623</sup> In this sense, prosecutors develop a paternalistic relation with Victims.<sup>624</sup> The hesitation of Victims to continue or abandon their cases triggers procedural consequences because the defence, taking advantage of the hesitation, waits until the last minute to propose mediation or

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<sup>615</sup> Female Prosecutor, JP 001.

<sup>616</sup> Ibid.

<sup>617</sup> Female Assistant to Female Prosecutor, JP 004; Female Prosecutor, JP 004.

<sup>618</sup> Female Prosecutor, JP 004.

<sup>619</sup> Male Prosecutor, JP 002; Genoveva Cardinali, “Violencia doméstica.”

<sup>620</sup> Male Prosecutor, JP 002.

<sup>621</sup> Ibid.; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004.

<sup>622</sup> Genoveva Cardinali, “Violencia doméstica.”

<sup>623</sup> Female Prosecutor, JP 001.

<sup>624</sup> Ibid.

probation because they know the chances are high that Victims will drop their complaints.<sup>625</sup>

#### 4.4.4. Rights Enforcement

This sub-section on rights enforcement examines the tools that justice providers mention using to enforce rights during the preliminary investigation stage (4.4.4.1.) and during mediation and probation (4.4.4.2.). Moreover, the relation between the will of Victims and rights enforcement is analysed as being an important component mentioned by justice providers (4.4.4.3.). This sub-section also considers the way the PPO coordinates with other organizations outside of the City to enforce rights (4.4.4.4.) and the tools relevant for transparency and accountability (4.4.4.5.).

##### 4.4.4.1. Preliminary Investigation Stage

Prosecutors can require the granting of preventive measures during the preliminary investigation stage;<sup>626</sup> such measures include providing Victims with a panic-button<sup>627</sup> or requiring police officers to accompany Victims to return to their homes.<sup>628</sup> Prosecutors can also require monetary assistance after evaluation by OFAVyT, and they can give Victims a sum of money to leave the abusive environment.<sup>629</sup> Yet, if prosecutors think it appropriate to grant restraining orders, they first have to proceed with the investigation and require the accused to testify on the alleged facts. Therefore, prosecutors benefit from the immediate restraining orders granted by civil courts. As stressed by a prosecutor, *Thank God that they [i.e. civil courts] will grant [immediate] measures because I cannot grant them.*<sup>630</sup> Some justice providers believe that only the OVD and civil courts give Victims real chances to access to justice.<sup>631</sup> The PPO cannot provide real chances to access to justice because it does not work directly with courts that can grant preventive measures.<sup>632</sup> The OVD and civil courts can react more properly to the immediate protection needed by Victims.<sup>633</sup> Criminal complaints are considered more capable of exercising coercive power and preventive measures throughout the process.<sup>634</sup> Prosecutors can grant preventive measures, for example, during probation.<sup>635</sup> They cannot, however, grant preventive measures during mediation because prosecutors do not participate in these meetings and no-contact agreements can be made by parties and mediators. Moreover, the PPO does not follow the same judicial holidays as the courts. This discrepancy arrests some of the

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<sup>625</sup> Male Prosecutor, JP 002.

<sup>626</sup> Requests are made when prosecutors receive complaints and after the risk to Victims is assessed, *ibid.*

<sup>627</sup> Female Prosecutor, JP 001.

<sup>628</sup> Female Prosecutor, JP 004.

<sup>629</sup> Female Prosecutor, JP 001.

<sup>630</sup> *Ibid.*

<sup>631</sup> Female Judge & Specialist in Gender Issues, JP 012; Female Prosecutor, JP 001; Female Prosecutor, JP 004.

<sup>632</sup> Female Judge & Specialist in Gender Issues, JP 012.

<sup>633</sup> *Ibid.*

<sup>634</sup> Male Prosecutor, JP 002.

<sup>635</sup> Female Prosecutor, JP 001.

activities of the PPO because during judicial holidays there are no trials and most of the requires sent by prosecutors are kept on hold until the judicial holidays end (e.g. requires to review the jurisdiction of the PPO to investigate a crime).<sup>636</sup>

The preliminary investigation stage gives prosecutors three months from the time the accused is notified of the facts alleged in complaints to: require mediation, submit cases to trial, or file away complaints.<sup>637</sup> Public defenders, knowing the limited time prosecutors have to take action, may purposely block notifications performed by prosecutors.<sup>638</sup> Prosecutors can notify the accused of facts in the complaints without notifying public defenders; however, if the accused wants to testify in front of the PPO, they have to attend with the public defenders (i.e. protecting their right to due process).<sup>639</sup> Prosecutors will then notify public defenders. Prosecutors have tools within the PPO to control compliance if parties agree to probation during the preliminary investigation stage.

Prosecutors can require preventive measures and alternative dispute resolution mechanisms during the preliminary investigation stage. However, protecting Victims effectively is considered very costly. For example, a judge mentions that more effective panic-buttons need to incorporate a GPS to allow the police to locate Victims immediately.<sup>640</sup> However, he recognizes that these policies demand a high allocation of resources because they not only need new technologies but also need available personnel.<sup>641</sup>

Prosecutors consider that judges play a key role in enforcing the rights of Victims.<sup>642</sup> Yet, some prosecutors perceive that there are judges who do not protect the rights of Victims, rather they protect the rights of the accused.<sup>643</sup> The rights of Victims are even less protected by some judges when it relates to Victims due to the type of evidence.<sup>644</sup> Prosecutors say that during court hearings they frequently have to argue for the value of the evidence and the rights of Victims.<sup>645</sup>

Prosecutors have to require restraining orders from judges if they cannot agree upon them with the defence.<sup>646</sup> Under these circumstances prosecutors observe that some judges also prioritize the rights of the accused over those of Victims when deciding on the request for restraining orders because they prioritize the “freedom of movement”

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<sup>636</sup> Ibid.

<sup>637</sup> Male Prosecutor, JP 002.

<sup>638</sup> Ibid.

<sup>639</sup> Ibid.

<sup>640</sup> Male Judge, JP 011.

<sup>641</sup> Ibid.

<sup>642</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004; Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>643</sup> Female Prosecutor, JP 001; Female Prosecutor, JP 004; Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>644</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>645</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004; Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>646</sup> Female Prosecutor, JP 001.

of the accused.<sup>647</sup> As explained, judges are *more concerned on the rights of the accused, than on the rights and guarantees of Victims*.<sup>648</sup> Prosecutors use court decisions and human rights treaties that help them highlight the international responsibility assumed by the state to condemn acts of violence.<sup>649</sup> These prosecutors mention that judges also need to receive mandatory training on how to handle domestic violence cases.<sup>650</sup> Be that as it may, one judge argues that judges need to have valid evidence before any decision can be made in view of constitutional rights.<sup>651</sup> Moreover, the same judge considers that judges have to take responsibility for their decisions (e.g. if a judge grants protective orders excluding abusers from their homes, the judge is also responsible for ensuring alternative housing).

The dynamics of domestic violence cases, when leaving aside the complex problem experienced by the parties, offer an ideal scenario for the prosecutors who like to investigate.<sup>652</sup> Prosecutors mention they are actively working on ways to convince judges during court hearings primarily on the value of the evidence.<sup>653</sup> They also highlight the importance of listening carefully to Victims' stories so as to understand all the elements available in their stories in order to later have enough elements to convince judges of the alleged facts (i.e. contextual evidence). As mentioned by a prosecutor:

*It is not easy, because we have a culture that trespasses us, which goes against [the rights of Victims], and that culture is very much rooted in courts. Then it is very difficult [to break with it], but I think that little by little, we have achieved many changes, in two years, we have achieved many changes.*<sup>654</sup>

*And when you go to court with contextual evidence, one sees that the woman was held captive in her marriage for 10 years and suffering the worst conditions and the worst humiliations. One takes [all those facts] to court so that the judge believes you that the threat existed. Not to have the accused condemned for all those facts and this is something we must clarify to judges. Because they tell you 'Why do you bring me [all these facts], if that is not my problem, it is not my problem that the abuser slapped her 20,000 times and that she never complained.' Judges do not even understand why Victims did not submit a complaint before.*<sup>655</sup>

The creation of specialized prosecutor units is perceived as the trigger for the increasing number of cases that reach trial in view of the tools prosecutors gained to argue at trial. These are primarily the human rights treaties dealing with the

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<sup>647</sup> Ibid.

<sup>648</sup> Female Assistant to Female Prosecutor, JP 004.

<sup>649</sup> Ibid.

<sup>650</sup> Female Prosecutor, JP 001; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004; Female Judge & Specialist in Gender Issues, JP 012.

<sup>651</sup> Male Judge, JP 011.

<sup>652</sup> Male Prosecutor, JP 003.

<sup>653</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002; Male Prosecutor, JP 003; Female Prosecutor, JP 004.

<sup>654</sup> Female Prosecutor, JP 004.

<sup>655</sup> Ibid.

responsibility of the state to ensure the rights of Victims and the court decisions that advance on the understanding of the evidence.<sup>656</sup>

Resolutions to the conflicts may not occur regardless of whether the accused is sentenced to jail because the cultural, social, and physiological characteristics of the parties are viewed as more relevant to enable real conflict resolution.<sup>657</sup> A judge believes that the connection between justice and jail, as a symbol of a successful achievement of justice, derives from a social misunderstanding of what a jail sentence does to the accused and to society.<sup>658</sup> This misunderstanding is considered to be partially the fault of the media.

The transit of parties through the judicial system is perceived as having an impact on the parties regardless of the results.<sup>659</sup> A prosecutor explains that the sole fact of experiencing a responsive PPO gives Victims tools to deal with their conflicts.<sup>660</sup> In relation to the accused, changes are mostly perceived when they encounter judges at trial and not when they first meet prosecutors to be notified of the alleged facts.<sup>661</sup> “Courts,” “trials,” “going to jail,” and “judges” are still viewed by some prosecutors as symbols that alert and show authority to the accused.<sup>662</sup>

#### 4.4.4.2. Mediation and Probation

Prosecutors use the reports drafted by OFAVyT to decide whether Victims are in condition to undergo mediation and also examine the particularities of the situation and the extent to which mediation can assist in resolving conflicts. Prosecutors have no enforcement power over the agreements signed by parties during mediation but can continue with the investigation when parties do not comply with them.<sup>663</sup> Mediators express that, to ensure compliance, they pay special attention to steer agreements that are realistic for parties, because unrealistic agreements decrease the chances of compliance.<sup>664</sup> Moreover, agreements are viewed as settlements for parties to start solving their problems and not as the final settlement.<sup>665</sup> Mediation cannot take place within two years when parties do not comply with their agreements. Mediators believe that parties comply with agreements, as they have rarely seen them return after two years.<sup>666</sup> As recognized by one mediator, *mediation has a compliance nature*.<sup>667</sup>

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<sup>656</sup> Ibid.

<sup>657</sup> Male Prosecutor, JP 003.

<sup>658</sup> Male Judge, JP 011.

<sup>659</sup> Male Prosecutor, JP 003; Male Judge, JP 010.

<sup>660</sup> Male Prosecutor, JP 003.

<sup>661</sup> Ibid.

<sup>662</sup> Ibid.

<sup>663</sup> Male Prosecutor, JP 002; Male Prosecutor, JP 003.

<sup>664</sup> Female Mediator, JP 007.

<sup>665</sup> Female Mediator, JP 008.

<sup>666</sup> Female Mediator, JP 007; Female Mediator, JP 008.

<sup>667</sup> Female Mediator, JP 007.

Some prosecutors view probation as a better option over mediation because it gives them chances to control compliance.<sup>668</sup> They also hold the view that the accused have more incentives to comply because the accused face the risk of receiving a jail sentence if trials are held, and they cannot request probation for the following eight years.<sup>669</sup>

#### 4.4.4.3. *Will of Victims*

In domestic violence conflicts strategies to enforce rights are often insignificant if Victims decide to return to the abusive relationship and drop their complaints.<sup>670</sup> Criminal complaints allow prosecutors to continue with the investigation regardless of the desire of Victims because crimes are of public interest. Civil complaints, however, depend on the will of the Victims to continue.<sup>671</sup> Prosecutors need to analyse in-depth under which circumstances they will continue with criminal complaints that lack the consent of Victims regardless of their actual possibilities to continue and they read, for that purpose, reports assessing the conditions of Victims drafted by OFAVyT.<sup>672</sup> However, prosecutors take to trial cases of severe violence independently of the will of Victims even when knowing that if Victims do not appear in court hearings they lose their main evidence and most probably their chances to obtain sentences against the accused.<sup>673</sup>

A prosecutor explains that normally they are *subordinated to the will of Victims, unless they perceive that Victims are not making decisions*.<sup>674</sup> Domestic violence cases, as explained by a lawyer specialist in domestic violence, present a deeper issue concerning the extent to which justice providers have to respect the will of Victims to withdraw from or continue with their cases.<sup>675</sup> On the one hand, the state cannot place Victims in a worse situation than the one they were in before submitting their complaints. On the other hand, prosecutors should not have to take away from Victims their decision-making power, because that was already taken away in their personal sphere by the abusers. As explained by the lawyer specialist in domestic violence:

*Interviewee: Victims lose the capability for this [i.e. for making decisions], because they have been, as I say, it is a method of brain washing ..., if you are punished every time you make some sort of independent choice, after a while you learn not to make those choices, because the punishment is not good. It is the Pavlovian training, in a sense, almost. So, domestic violence clients require a lot more support than most of our other legal services clients. [Emphasis added]*

*Interviewer: And this support is ...*

<sup>668</sup> Male Prosecutor, JP 002; Female Prosecutor, JP 001.

<sup>669</sup> Male Prosecutor, JP 002.

<sup>670</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>671</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>672</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 002.

<sup>673</sup> Female Prosecutor, JP 001.

<sup>674</sup> Ibid.

<sup>675</sup> Attorney at Legal Aid in the US, In-depth Interview.



*Interviewee: Both emotional and legal.*

*Interviewer: And how do you work on building their capabilities again?*

*Interviewee: You spend quite a bit of time telling them their options.*

*Interviewer: Ok. Their legal options and ...*

*Interviewee: Their legal, and sometimes I feel almost like a social worker. I really do. Listening to them about, 'No, this is actually something that you can do,' 'Yes, it is going to be hard,' but this is actually, you know, years of practical means of doing this, and you work at small accomplishments. **Now, one of the traps that an attorney will sometimes fall into who represents victims of domestic violence, is that you cannot let yourself make the choices for the client. You have to present them with their options and let them make their choices,** sometimes those choices will be good, and sometimes they will not be what you think is best. **But you have to support their decision.** That is a very hard thing to learn with clients.'*<sup>676</sup>  
[Emphasis added]

As further mentioned by that same interviewee while elaborating on why it is important to respect the will of Victims to continue with their cases:

*... So, literally, this is the most likely time that the person is going to be killed. And that is a reality. And that is a reality we as lawyers do not face. In most cases unless we are being abused, and there are some abused lawyers. But, you really have to be aware that **you cannot make the decision for someone else, as what risks they are going to assume. Otherwise you are doing that same thing that that abuser did. The exact same thing.***<sup>677</sup>[Emphasis added]

Prosecutors state that, even without the internal regulation that prohibits prosecutors from using the public force to bring Victims to testify, they would not do it because under human rights treaties the state cannot place Victims in a worse situation relative to the one before submitting complaints.<sup>678</sup> In addition, Victims assume risks when they submit complaints, and a prosecutor experiences cases where Victims release all the information about the violence experienced only after the judicial system enforced some type of penalty that made them feel safe.<sup>679</sup>

#### *4.4.4.4. Coordination with Other State Organizations*

Prosecutors explain that often they encounter cases where Victims live in the province of Buenos Aires and work in the City (or *vice versa*), and the crime occurs in the City.<sup>680</sup>

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<sup>676</sup> Ibid.

<sup>677</sup> Ibid.

<sup>678</sup> Female Prosecutor, JP 001; Male Prosecutor, JP 003.

<sup>679</sup> e.g. a prosecutor explains how a Victim, after the abuser received a jail sentence, came to the prosecutor unit with all the evidence she had collected during the years she was subject to violence. On that occasion, she also shared how the abuser had repeatedly told her that no judge would ever believe her, Male Prosecutor, JP 002.

<sup>680</sup> Female Prosecutor, JP 001; Male Assistant to Female Prosecutor 004, JP 004; Female Assistant to Female Prosecutor, JP 004.

If preventive measures are granted, prosecutors have to enforce them in a different jurisdiction with the assistance of different state organizations. They have to coordinate with a different state organizational structure for that purpose (e.g. Buenos Aires provincial police). Some prosecutors state that the communication with the Buenos Aires provincial police flows without problems, while for others it represents an additional burden to overcome because there are fewer channels of communication with the Buenos Aires provincial police and therefore it takes longer to make notifications.<sup>681</sup> Moreover, when Victims live in a jurisdiction different from the City, prosecutors have fewer chances to exercise other preventive measures, such as sending mobile units of the PPO to the houses of Victims.<sup>682</sup>

#### 4.4.4.5. *Transparency and Accountability*

The adversarial system is perceived by judges as being more transparent because it distinguishes the role of prosecutors and judges.<sup>683</sup> Judges do not participate in the investigations but render impartial court decisions, and oral court hearings allow parties to know the same information that is being presented to judges while witnessing decisions of judges. Judges express that they communicate with prosecutors and defenders through a system of text messages which many times accelerates decisions.<sup>684</sup> These fast and written methods of communication also assist in elucidating conflict statements between providers.<sup>685</sup> Moreover, all updates on cases are entered into the information systems management system by the PPO and are accessible to justice providers and service providers working on the cases, thereby becoming a means of transparency and accountability.<sup>686</sup>

Some justice providers consider the media an *enemy* because of the release of partial information,<sup>687</sup> while other justice providers view the media as an eye that watches and communicates to the people on the performance of justice providers.<sup>688</sup> Currently, the media is perceived as taking a stand for Victims and as delivering news with strong positions against court decisions without informing the public about all the elements that judges had to consider before arriving at a decision. For example, a judge mentions the case of a woman who was raped and who was able to recognize six men as potential abusers.<sup>689</sup> A DNA test was performed on all of the men, though all results were negative. The same judge dismissed the case based on the DNA tests, but the media published an article titled “Rapist was Left Free in Villa Urquiza.” The media also held prosecutors accountable and as explained by a prosecutor, when the

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<sup>681</sup> Female Prosecutor, JP 001.

<sup>682</sup> Female Assistant to Female Prosecutor, JP 004; Male Assistant to Female Prosecutor 004, JP 004.

<sup>683</sup> Male Judge, JP 010; Male Judge, JP 011.

<sup>684</sup> Male Judge, JP 011.

<sup>685</sup> Ibid.

<sup>686</sup> Female Prosecutor, JP 001.

<sup>687</sup> Male Judge, JP 011.

<sup>688</sup> Female Prosecutor, JP 004.

<sup>689</sup> Male Judge, JP 011.

media releases news about Victims who even after submitting complaints were killed or harmed, prosecutors immediately check whether those are their cases.<sup>690</sup>

#### 4.4.5. Partial Observations

The increase in the number of domestic violence complaints reaching the judicial system seems to assist in the development of new forms to enforce the rights of Victims. The possibility to enforce concrete actions is nevertheless limited in domestic violence cases, and a high degree of responsibility falls on the willingness of parties to change their behaviour. Prosecutors have tools to enforce changes with respect to behaviour, though they are limited. Mediators do not have tools for enforcement, but they perceive agreements to be complied with because they are designed with the input brought by the parties themselves. Judges view difficulties in enforcing, for example, jail sentences and restraining orders, because of the lack of clear evidence to support their decisions and because of the risk of negatively affecting the household.

Justice providers reflect the shift that the evidence experiences in the way it is valued. They also indicate a shift in the role of Victims based on the way their participation is considered during the legal procedure. The increase in domestic violence complaints triggers discussions about the extent to which a punitive approach to criminal law serves conflict resolution. Justice providers perceive that alternative dispute resolution mechanisms, for some cases of domestic violence, shorten the distance between parties and conflict resolution. The type of assistance needed to resolve conflicts is also challenged by domestic violence cases. Legal provisions and Legal Organizations clearly appear as tools that are not able to solve completely the problems of Victims, because they cannot tackle the cultural, social, and physiological aspects of problems.<sup>691</sup>

The *sui generis* view of the evidence presented by Victims, the type of assistance that the judicial system can provide to Victims, and the type of crimes Victims suffer break with the orthodox legal approach. The services provided by Legal Organizations can be a source of empowerment when they are trustful, responsive, and represent a safe environment for Victims. However, the transit through the PPO is considered a starting point or the beginning of a path to conflict resolution. Tools are left to the parties who transit through the PPO. On the one hand, for Victims, there is the knowledge that there is a system that considers their problems; on the other hand, for abusers, there is the understanding that there is a system that watches and reacts to their behaviours.

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<sup>690</sup> Male Prosecutor, JP 002.

<sup>691</sup> Providers, as understood by a judge, should receive training on three aspects: 1. violence can never be tolerated, accepted, or negotiated; 2. gender-violence laws have to be known by every member of society, and, therefore, diffusion is needed in the media, secondary schools, and universities; and 3. providers must never have to re-victimize Victims, Female Judge & Specialist in Gender Issues, JP 012.

## 4.5. Service Providers

This section examines data collected from the multidisciplinary group of OFAVyT composed of psychologists, lawyers, bachelor students (either in law or psychology), a social worker, and a professor of philosophy. OFAVyT assists Victims on a daily basis. Almost 70 per cent of the sample has been licenced to practise their professions for at least six years. Within this 70 per cent, almost half has been licenced to practise for more than ten years. Less than 20 per cent of the sample has been licenced to practise for between two to five years, while three service providers were not licenced to practise. Almost 40 per cent of the sample has been working at OFAVyT for four years or more, and 30 per cent has been working at OFAVyT for less than a year. The rest of the sample has been working at OFAVyT for the last two to four years.

There is no significant difference in the way service providers respond to questions, even when 60 per cent of the sample is composed by psychologists. Service providers have similar perceptions, regardless of their professions, on: (i) the importance of the coordination with other organizations to resolve conflicts; (ii) the importance of providing people with a service that is free of charge; (iii) the value of the referrals to enable conflict resolution; (iv) the value for Victims of having an organization that provides support throughout the process; and (v) the value for Victims of having an organization that provides information. Psychologists, however, give more relevance to the individual characteristics of each Victim at the time of providing assistance and support. Psychologists also have a greater capacity to perceive the complexity of the problems brought by Victims and their need for holistic assistance. They view more clearly the limitations of the judicial system to resolve conflicts and highlight the importance of performing constant training to improve the assistance they deliver.

Lawyers, as expected, mention more often the importance of legal provisions and legal solutions. Lawyers can also define specifically what rights Victims recognize having (e.g. the right to request jail sentences and to submit complaints), while psychologists express broadly that some Victims recognize having rights when they access the PPO. The same occurs with the delivery of information. Lawyers and the other service providers recognize the importance of the delivery of information, yet psychologists perceive more clearly the specificities of the information that needs to be delivered. The social worker and the professor of philosophy mostly answer along the same lines as psychologists.

### 4.5.1. Rights Enhancement

This sub-section on rights enhancement analyses how service providers view domestic violence as a legal problem (4.5.1.1.). It also analyses the perceptions of service providers on the developments in the judicial system and how it can contribute to resolve domestic violence (4.5.1.2.). This sub-section also analyses how service providers view the incorporation of OFAVyT to assist Victims (4.5.1.3.).

#### 4.5.1.1. Domestic Violence as a Legal Problem

Service providers, as key civil servants and justice providers, consider domestic violence a multidimensional problem (“multi-factor”). They consider that domestic violence problems encompass, in order of relevance: a social (and cultural) problem, a psychological problem, an economic problem, and a legal and welfare problem.<sup>692</sup> One-fourth of service providers reduce domestic violence to a stereotype accepted in the psychology of people and learned through the observation of accepted behaviours in families, schools, workplaces, other public spaces, and the state.<sup>693</sup> Domestic violence is therefore rooted in an *androcentric culture*<sup>694</sup> and is considered a problem embedded in society and determined by society.

No interviewee considers domestic violence to be solely a legal problem. The legal dimension of the problem, however, is associated with how legal provisions treat domestic violence and the duty that legal provisions assign to the state to act.<sup>695</sup> The psychological and economic dimensions of domestic violence are associated with the dependency of Victims on the abusers. The psychological dependency is also viewed as a subjective dependency that derives from a *devaluated representation of oneself* or from a *person who inhibits herself*.<sup>696</sup> Some service providers, nevertheless, consider that the problem of domestic violence has been recently transformed into a *commercial and consumer object*.<sup>697</sup>

#### 4.5.1.2. Contributions of the Judicial System

Service providers believe that the judicial system either “contributes” or “does not contribute much” to an effective conflict resolution.<sup>698</sup> Those service providers who perceive that the judicial system contributes to an effective conflict resolution mention legal provisions and the judicial system as tools that frame conducts and order

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<sup>692</sup> Psychologist, SP 001; Psychologist, SP 003; Law Student, SP 005; Psychologist, SP 006; Social Worker, SP 007; Lawyer, SP 008; Psychologist, SP 009; Student, SP 010; Professor of Philosophy, SP 011; Psychologist, SP 012; Psychologist, SP 014; Lawyer, SP 016; Psychologist, SP 019; Lawyer, SP 020; Psychologist, SP 021; Psychologist, SP 024; Psychologist, SP 025; Psychologist, SP 026.

<sup>693</sup> Lawyer, SP 002; Psychologist, SP 004; Psychologist, SP 015; Student, SP 018; Psychologist, SP 022; Psychologist, SP 023, 23.

<sup>694</sup> Psychologist, SP 023.

<sup>695</sup> Psychologist, SP 003; Law Student, SP 005; Professor of Philosophy, SP 011.

<sup>696</sup> Professor of Philosophy, SP 011.

<sup>697</sup> Psychologist, SP 015.

<sup>698</sup> Eleven out of 26 service providers state that the judicial system contributes to resolving conflicts (Psychologist, SP 001; Psychologist, SP 003; Law Student, SP 005; Student, SP 010; Psychologist, SP 014; Lawyer, SP 017; Lawyer, SP 020; Psychologist, SP 021; Psychologist, SP 023; Psychologist, SP 024; Psychologist, SP 025). Eleven out of 26 service providers state that the judicial system does not contribute much to resolve conflicts (Lawyer, SP 002; Psychologist, SP 004; Psychologist, SP 006; Social Worker, SP 007; Lawyer, SP 008; Psychologist, SP 009; Professor of Philosophy, SP 011; Psychologist, SP 012; Psychologist, SP 013; Psychologist, SP 019; Psychologist, SP 022). Only one service provider considers that the judicial system does not contribute at all to resolving conflicts (Law Student, SP 005). Another states that it neither contributes nor does not contribute (Psychologist, SP 026). Finally two service providers mention that it highly contributes to resolving conflicts (Lawyer, SP 016; Student, SP 018).

conflicts.<sup>699</sup> Legal provisions, therefore, act as a *good social controller*<sup>700</sup> and the judicial system acts as a symbol of limits that cannot be trespassed. Furthermore, the intervention of the judicial system and the gathering of statistics give social visibility to domestic violence.<sup>701</sup>

The interplay between the judicial system and the resolution of conflicts is not solely viewed as a legal relation. Service providers express the importance of incorporating, within the judicial system, tools that assist parties in reflecting on their role in their conflicts.<sup>702</sup> Therefore, the judicial system contributes to making parties conscious of the problems they are facing and what their responsibilities are in those conflicts.<sup>703</sup> The assistance of OFAVyT for those Victims and probation for the accused are mentioned as means to assist parties in gaining responsibility over their conflicts.<sup>704</sup> Resolution of conflicts, ultimately, is viewed as highly dependent on the will of Victims and their decisions to place a limit to the actions of the accused. The judicial system then faces difficulties in continuing with complaints if Victims are unreachable and it also faces limits with respect to auto-enforce effective preventive measures.<sup>705</sup> Service providers perceive, however, that actions taken by the judicial system aiming at empowering Victims to exteriorize their desires and boundaries contribute to conflict resolution. The boundaries that Victims can place are related to the resources available to Victims to cope with the absence of the accused.<sup>706</sup>

The judicial system contributes to protecting Victims in the short term (e.g. granting preventive measures, temporary child support, and visitation). In addition, the judicial system informs Victims on all the legal and non-legal options available to resolve their conflicts.<sup>707</sup> The judicial system contributes less to conflict resolution in the long term. Service providers explain that a large number of domestic violence cases that reach the PPO are filed away. Only a reduced number of accused experience trial and receive a sentence.<sup>708</sup> Besides the judicial aspect of conflicts, service providers mention the importance for Victims to receive support from their families and the social environment together with the assistance of psychologists.<sup>709</sup> In addition, though less frequently, updated legal provisions and non-discriminatory ideologies of some judges are mentioned as obstacles to the possibilities of the judicial system to properly assist

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<sup>699</sup> Psychologist, SP 003; Psychologist, SP 014; Lawyer, SP 020; Psychologist, SP 023; Student, SP 018.

<sup>700</sup> Psychologist, SP 003.

<sup>701</sup> Lawyer, SP 020.

<sup>702</sup> Psychologist, SP 014.

<sup>703</sup> Lawyer, SP 020; Psychologist, SP 023.

<sup>704</sup> Psychologist, SP 014.

<sup>705</sup> Lawyer, SP 002; Psychologist, SP 022; Psychologist, SP 012; Psychologist, SP 019; Psychologist, SP 014.

<sup>706</sup> Psychologist, SP 019.

<sup>707</sup> Psychologist, SP 024; Student, SP 018; Lawyer, SP 008; Psychologist, SP 009; Professor of Philosophy, SP 011; Lawyer, SP 002.

<sup>708</sup> Psychologist, SP 004; Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>709</sup> Psychologist, SP 025.

Victims.<sup>710</sup> A service provider further reflects that civil and criminal justice have to work together in order to assist Victims in the long term.<sup>711</sup>

The intervention of the judicial system is viewed by one psychologist as not contributing at all to conflict resolution.<sup>712</sup> That interviewee explains that the judicial system expropriates the conflict from parties and does not motivate their autonomy to decide on their own conflicts. Consequently, decisions are left in the hands of third parties. Mediation, however, is mentioned as an option that allows parties to hold to the potential resolutions of conflicts.<sup>713</sup>

#### 4.5.1.3. *Assistance to Victims*

##### 4.5.1.3.1. Incorporation of OFAVyT

Almost every service provider considers that the incorporation of OFAVyT “contributes” or “highly contributes” to conflict resolution. Four interviewees consider that OFAVyT “does not contribute much” to conflict resolution,<sup>714</sup> and no interviewee considers that it “does not contribute at all.”

Service providers mention objective and subjective aspects of conflicts that are positively affected by the intervention of OFAVyT. Amongst the objective aspects, interviewees mention that elements that highly contribute to an effective conflict resolution are: (i) informing Victims on their rights and obligations, and on the legal procedure;<sup>715</sup> (ii) providing advice to Victims;<sup>716</sup> and (iii) assisting Victims with a broad approach to the conflicts, including economic assistance and referrals to safety measures such as shelters and welfare organizations.<sup>717</sup> Amongst the subjective aspects, service providers mention that the assistance generates positive changes because it empowers Victims.<sup>718</sup> Primarily, the sense of company throughout the process empowers Victims to continue with their cases: they feel that *someone else cares*.<sup>719</sup> The support and company in general strengthen the active involvement of Victims in resolving their conflicts and improves their participation in the judicial sphere.<sup>720</sup> The aforementioned aspects are affected by the emotional and psychological conditions of Victims,<sup>721</sup> and the assistance and company of OFAVyT is mentioned as

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<sup>710</sup> Psychologist, SP 006.

<sup>711</sup> Psychologist, SP 026.

<sup>712</sup> Psychologist, SP 015.

<sup>713</sup> Ibid.

<sup>714</sup> Psychologist, SP 009; Professor of Philosophy, SP 011; Psychologist, SP 015; Psychologist, SP 022.

<sup>715</sup> Psychologist, SP 024; Student, SP 018; Psychologist, SP 006; Social Worker, SP 007; Psychologist, SP 023.

<sup>716</sup> Lawyer, SP 020; Lawyer, SP 016; Psychologist, SP 014.

<sup>717</sup> Psychologist, SP 024; Student, SP 018; Psychologist, SP 013; Psychologist, SP 014; Psychologist, SP 025.

<sup>718</sup> Lawyer, SP 002; Lawyer, SP 016; Lawyer, SP 020; Psychologist, SP 014; Law Student, SP 005.

<sup>719</sup> Lawyer, SP 020; Lawyer, SP 016; Law Student, SP 005; Lawyer, SP 002; Psychologist, SP 012; Psychologist, SP 023; Psychologist, SP 026.

<sup>720</sup> Psychologist, SP 003.

<sup>721</sup> Student, SP 010; Law Student, SP 005.

increasing the self-esteem of Victims.<sup>722</sup> The assistance provided by OFAVyT, moreover, is considered to be more relevant for the Victims who do not have any other support from their families, friends, or the state.<sup>723</sup> The assistance also bridges the needs of Victims and the needs of the judicial system which often respond to different times and procedures.<sup>724</sup>

Service providers who consider that assisting and accompanying Victims throughout the process does not contribute much to conflict resolution perceive that the limitations derive from the short and limited intervention of OFAVyT.<sup>725</sup> The assistance of OFAVyT helps because Victims are heard, provided guidance, and accompanied, yet the assistance needs to be continued by other organizations if Victims want to achieve an effective resolution of their conflicts.<sup>726</sup>

The current design of OFAVyT is perceived as somehow helpful for Victims to resolve their conflicts.<sup>727</sup> No service provider considers that the structure of OFAVyT resolves conflicts entirely, but rather that it is mostly a *kick-off*.<sup>728</sup> The initial comprehensive assistance provided, together with the company, (legal) assistance, and support is considered helpful for Victims to transit through their problems and through the PPO. However, this initial comprehensive assistance helps Victims to start resolving only some aspects of their conflicts.<sup>729</sup> A resolution for the entire conflict is beyond the scope of possibilities and tools available to service providers. Most interviewees agree that Victims need to continue with the assistance outside of OFAVyT to obtain a *real remedy to their problems*,<sup>730</sup> and that the PPO needs to better articulate their communication and cooperation with internal units and external organizations. Smooth communication and cooperation with internal units would assist service providers in helping Victims transit through the legal procedure,<sup>731</sup> while smooth communication and cooperation with external organizations would assist service providers in offering Victims better options to continue with the assistance.<sup>732</sup>

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<sup>722</sup> Law Student, SP 005.

<sup>723</sup> Lawyer, SP 020.

<sup>724</sup> Psychologist, SP 004; Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>725</sup> Professor of Philosophy, SP 011; Psychologist, SP 015; Psychologist, SP 022.

<sup>726</sup> Psychologist, SP 009; Professor of Philosophy, SP 011; Psychologist, SP 022.

<sup>727</sup> None of the service providers considers that the structure of OFAVyT does not help Victims at all or that it helps them a lot in resolving their conflicts. Three service providers perceive that it does not help much (Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 023). Six service providers perceive that the structure of OFAVyT neither helps nor does not help Victims to resolve their conflicts (Psychologist, SP 004; Psychologist, SP 006; Psychologist, SP 009; Psychologist, SP 015; Psychologist, SP 019; Psychologist, SP 022). While the rest perceive that the structure is helpful for Victims in resolving their conflicts.

<sup>728</sup> Lawyer, SP 020.

<sup>729</sup> Psychologist, SP 012; Psychologist, SP 013; Lawyer, SP 017; Psychologist, SP 024.

<sup>730</sup> Lawyer, SP 008.

<sup>731</sup> Psychologist, SP 026.

<sup>732</sup> Lawyer, SP 008; Lawyer, SP 020; Student, SP 018; Lawyer, SP 016; Psychologist, SP 022; Social Worker, SP 007; Psychologist, SP 014; Psychologist, SP 015; Psychologist, SP 006; Psychologist, SP 009; Psychologist, SP 019.



Some service providers view the judicialization of problems as ultimately the bureaucratization of those problems.<sup>733</sup> They further consider that the structure of the PPO sometimes requires from service providers many administrative and bureaucratic requirements that are detrimental to the performance of their duties.<sup>734</sup> A private and quiet physical space to conduct meetings with Victims is considered essential for the proper performance of their duties. Moreover, service providers consider that undertaking joint interviews with colleagues with different professions is beneficial in assisting Victims with their conflicts, because one service provider can assist in the psychological and welfare aspects while another can focus on the legal aspects.<sup>735</sup>

#### 4.5.1.3.2. Profession of Service Provider

A closed-ended question asked service providers to rank from one to ten the extent to which they trust that their professional intervention can help Victims to perform different actions. Almost every service provider, regardless of profession, considers that their professional intervention can “definitely” or “somehow” help Victims to: (i) understand the legal situation they are facing and their legal options; (ii) understand their rights and obligations; (iii) understand the role played by the judicial system; (iv) receive support; (v) understand the situation they are going through, above and beyond the legal aspect; (vi) understand their role in achieving conflict resolution in the long term; (vii) obtain capacity to recognize themselves as Victims; (viii) acquire the chance to be heard and express themselves; (ix) gain personal strength; and (x) receive referrals to additional assistance.

The mean for every answer to that question is located between the options that reflect that service providers feel they could probably help and that they could definitely help. On rare occasions, one or two service providers state that their professional intervention could definitely not help. Therefore, the self-perception that service providers have on the fact that their professions are tools that enable them to assist Victims is very positive. In general, service providers feel that they can help in different aspects of the conflicts of Victims regardless of their profession. However, service providers do state the need to have meetings with other professionals to improve the assistance.

#### 4.5.1.3.3. Challenges

##### 4.5.1.3.3.a. Length

The assistance provided by OFAVyT can be more useful for Victims as long as follow-ups can be performed, more autonomy is given to the unit, and coordination with other organizations is further developed. Service providers consider that the

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<sup>733</sup> Psychologist, SP 003; Lawyer, SP 002; Law Student, SP 005; Student, SP 018; Psychologist, SP 025; Student, SP 018.

<sup>734</sup> Social Worker, SP 007; Psychologist, SP 014; Professor of Philosophy, SP 011.

<sup>735</sup> Professor of Philosophy, SP 011; Psychologist, SP 023; Law Student, SP 005.

assistance provided to Victims has to be prolonged in order to be more useful.<sup>736</sup> The number of cases and the requests to respond to formal requirements from the PPO is also perceived as an obstacle.<sup>737</sup> Therefore, to reduce the number of cases, service providers suggest limiting their assistance to Victims who are experiencing a high risk of harm.<sup>738</sup> Service providers consider it useful that OFAVyT may function with a higher autonomy than the prosecutor units, allowing for a major focus on the needs of each Victim and not on formal requirements.<sup>739</sup> The increase of autonomy can grant service providers the possibility to adapt to the particularities of cases<sup>740</sup> and to make decisions without depending on other organizations. For example, service providers consider it beneficial to help Victims to overcome needs if they could grant preventive measures and have access to more resources (e.g. subsidies, economic assistance, housing, and employment offers).<sup>741</sup>

#### 4.5.1.3.3.b. Communication and Coordination

A deeper communication and coordination with internal units and external organizations is considered necessary. Service providers perceive that a better coordination with prosecutor units would be beneficial for Victims together with a better understanding by the prosecutor units of the tasks performed by OFAVyT.<sup>742</sup> Moreover, a better coordination between the PPO and civil courts, together with a better understanding by Victims of their civil cases, is mentioned so as to assist OFAVyT in providing a more useful service.<sup>743</sup> Proper training on domestic violence by providers of different organizations improves the usefulness of the referrals performed by OFAVyT.<sup>744</sup>

Some service providers work on developing an effective referral list.<sup>745</sup> This referral list lacks more and better welfare resources from the City executive.<sup>746</sup> Moreover, to avoid false expectations in Victims, service providers explain clearly where they can and where they cannot be of help. Service providers explain to Victims that in order to continue with the assistance, they need to use other resources that will help them overcome the limitations of OFAVyT.<sup>747</sup> Service providers occasionally continue with

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<sup>736</sup> Lawyer, SP 002; Psychologist, SP 004; Professor of Philosophy, SP 011; Lawyer, SP 017; Psychologist, SP 026; Psychologist, SP 013.

<sup>737</sup> Psychologist, SP 013; Lawyer, SP 002; Psychologist, SP 025.

<sup>738</sup> Psychologist, SP 023.

<sup>739</sup> Psychologist, SP 003; Psychologist, SP 004.

<sup>740</sup> Psychologist, SP 009.

<sup>741</sup> Lawyer, SP 008; Student, SP 010; Psychologist, SP 012; Psychologist, SP 023; Psychologist, SP 015; Psychologist, SP 024.

<sup>742</sup> Law Student, SP 005; Psychologist, SP 014; Lawyer, SP 002.

<sup>743</sup> Law Student, SP 005; Lawyer, SP 008; Professor of Philosophy, SP 011; Psychologist, SP 014; Psychologist, SP 019; Psychologist, SP 024.

<sup>744</sup> Psychologist, SP 004; Psychologist, SP 015; Psychologist, SP 025.

<sup>745</sup> Psychologist, SP 019; Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>746</sup> Psychologist, SP 024.

<sup>747</sup> Law Student, SP 005; Psychologist, SP 006; Psychologist, SP 025.

their assistance regardless of the results of the complaints in order to overcome the structure of the judicial system.<sup>748</sup>

#### 4.5.1.3.3.c. Approach to Assistance

Some service providers consider that OFAVyT could be more useful to Victims if the physiological assistance were improved by strengthening the non-legal aspect of conflicts (e.g. introducing group therapy).<sup>749</sup> A psychologist even proposed the incorporation in the PPO of a short-term psychological therapy for Victims. This provider considers that, even though beyond the scope of the judicial system, a short-term psychological therapy would help Victims to solve their problems.<sup>750</sup> Lawyers also have their proposals. They perceive it useful for Victims if OFAVyT could legally represent them and have deeper intervention in their legal procedures.<sup>751</sup>

Meetings held with a multidisciplinary team provide Victims with a service that is different to the one they can or could have received elsewhere.<sup>752</sup> Holding meetings in pairs is mentioned as a way to achieve a more comprehensive view of the conflicts brought by Victims. Service providers mention that the multidisciplinary assistance could be improved if they could assist Victims within the spectrum of their professions, however.

Communication techniques and the use of different tools to build trust are considered important for service providers to enable a useful meeting with Victims.<sup>753</sup> Trusting in their professional performance and its impact is also important.<sup>754</sup> Listening carefully, respectfully, and calmly are tools used to allow Victims to release their emotions.<sup>755</sup> Moreover, and for similar purposes, some service providers work on pointing out to Victims the importance of their decisions and actions to overcome conflicts.<sup>756</sup> Other means of communication are sought by service providers when Victims live with the abuser.<sup>757</sup>

The delivery of assistance could be improved with the design of proper physical spaces in which to hold meetings. The physical spaces need to provide a quiet and private environment that allows Victims to feel sufficiently comfortable to share their conflicts and to allow service providers to entirely focus on the accounts of Victims.<sup>758</sup>

Sharing experiences and consulting with colleagues on how to assist certain cases helps service providers to offer the best possible answers within the short interventions.<sup>759</sup> Moreover, service providers explain that to prepare for their daily

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<sup>748</sup> Lawyer, SP 016.

<sup>749</sup> Lawyer, SP 002; Psychologist, SP 025; Psychologist, SP 015.

<sup>750</sup> Psychologist\_In-depth Interview, SP 036.

<sup>751</sup> Lawyer, SP 017; Lawyer, SP 016.

<sup>752</sup> Social Worker, SP 007; Lawyer, SP 020.

<sup>753</sup> Lawyer, SP 008; Psychologist, SP 012; Psychologist, SP 022.

<sup>754</sup> Psychologist, SP 023.

<sup>755</sup> Lawyer, SP 002; Psychologist, SP 006; Psychologist, SP 009.

<sup>756</sup> Psychologist, SP 015.

<sup>757</sup> Student, SP 010.

<sup>758</sup> Law Student, SP 005.

<sup>759</sup> Professor of Philosophy, SP 011; Psychologist, SP 013; Lawyer, SP 017.

challenges they attend training and psychological therapy. When in doubt about how to handle a case, they first trust in their professional experience and then consult with colleagues or with other internal units or external organizations.<sup>760</sup> In addition, service providers perform self-assessments and review complicated cases in group meetings, which some internal units organize weekly.<sup>761</sup>

#### 4.5.1.3.3.d. Characteristics of Victims

The cyclical aspect of domestic violence and the way in which Victims have naturalized their problems are mentioned as main challenges.<sup>762</sup> Service providers need to reduce anxieties, mistrust, and the helplessness of Victims and increase their confidence in order to help them understand that they do not have to cope with abusive relationships.<sup>763</sup> When Victims live with abusers, service providers experience a challenge to communicate with Victims without increasing their risk of abuse.<sup>764</sup>

Service providers also face challenges in sustaining the initial desire of Victims to change as expressed by the submission of complaints.<sup>765</sup> During meetings service providers have to work with Victims on the understanding of the importance of their roles in provoking desired changes<sup>766</sup> (e.g. convince Victims to start psychological therapy to sustain their decisions<sup>767</sup>). Service providers therefore need to transmit to Victims trust in the judicial system and hope in their own capacity to find a good way out of their problems.<sup>768</sup> Dealing with the emotions of Victims is a challenge for service providers because it is difficult to detach from the emotional component of conflicts,<sup>769</sup> and, sometimes, the service providers trained in law struggle more to control emotional breakdowns.<sup>770</sup>

#### 4.5.1.3.3.e. Legal Organizational Design

Service providers sometimes encounter constraints given by the organizational design of the PPO. They primarily mention time constraints and the availability of few human resources to attend to all cases together with ineffective means of referrals.<sup>771</sup> Many service providers express that in one meeting of approximately forty-five minutes it is difficult to provide Victims with comprehensive assistance and assess the type of risk they encounter. Moreover, many Victims only experience this forty-five-minute meeting and,<sup>772</sup> within this time, service providers need to *rebuild the truth* of the

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<sup>760</sup> Psychologist, SP 003; Psychologist, SP 004; Psychologist, SP 014; Psychologist, SP 021.

<sup>761</sup> Psychologist, SP 026.

<sup>762</sup> Psychologist, SP 004; Psychologist, SP 025.

<sup>763</sup> Psychologist, SP 022; Psychologist, SP 023; Lawyer, SP 017.

<sup>764</sup> Student, SP 010.

<sup>765</sup> Psychologist, SP 015.

<sup>766</sup> Lawyer, SP 008.

<sup>767</sup> Psychologist, SP 003, 3.

<sup>768</sup> Psychologist, SP 021; Psychologist, SP 023.

<sup>769</sup> Psychologist, SP 026.

<sup>770</sup> Law Student, SP 005.

<sup>771</sup> Lawyer, SP 020; Student, SP 018; Psychologist, SP 024; Psychologist, SP 019.

<sup>772</sup> Psychologist, SP 006; Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 012; Psychologist, SP 013; Student, SP 018; Lawyer, SP 020.

story<sup>773</sup> and ensure that Victims leave that meeting with some level of empowerment and a strategy to start resolving their conflicts.<sup>774</sup> Service providers therefore have to perform proper referrals which are not always available to them. The lack of smooth coordination with other state organizations and NGOs is a challenge at that stage.<sup>775</sup> Service providers are also asked by the PPO to comply with many formal requires and often service providers feel that they have to respond more to those requires than to the needs of Victims.<sup>776</sup>

#### 4.5.1.3.3.f. Legal Provisions

Many challenges mentioned by service providers relate to the characteristics of the conflicts and the type of assistance needed, though legal provisions are not generally mentioned as a challenge. Only two psychologists consider that it is a challenge for them to ensure that Victims recognize their rights and obligations and that they clearly communicate the consequences and limitations of the legal procedure.<sup>777</sup> These service providers express that having longer meetings would help them to better explain to Victims their rights.<sup>778</sup> Furthermore, a lawyer faces the challenge of embracing and empowering Victims to deal with the legal procedure at the PPO.<sup>779</sup>

### 4.5.2. Rights Awareness

This sub-section on rights awareness analyses how service providers perceive the extent to which Victims are aware of their rights when they access the PPO (4.5.2.1.). Moreover, the extent to which service providers perceive how the awareness of rights by Victims can be considered a tool for empowerment is analysed (4.5.2.2.).

#### 4.5.2.1. *Victims Awareness of Rights*

Service providers respond that not all Victims are aware of their rights during the first meetings with OFAVyT. More than half of service providers consider that some Victims do know some of their rights, and only one interviewee states that all Victims know their rights during the first meetings.<sup>780</sup> Secondary education,<sup>781</sup> accessibility to social and economic resources, and the chances to access information are mentioned as characteristics that are present in Victims who know some of their rights by the

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<sup>773</sup> Professor of Philosophy, SP 011.

<sup>774</sup> Student, SP 018; Psychologist, SP 024; Psychologist, SP 019; Psychologist, SP 014.

<sup>775</sup> Psychologist, SP 009.

<sup>776</sup> Psychologist, SP 004; Social Worker, SP 007; Lawyer, SP 016.

<sup>777</sup> Psychologist, SP 003; Psychologist, SP 024.

<sup>778</sup> Psychologist, SP 024.

<sup>779</sup> Lawyer, SP 002.

<sup>780</sup> Student, SP 010.

<sup>781</sup> Service providers observe that there is a large number of people in the City who did not finish secondary school, Psychologist, SP 003; this perception is confirmed by the report presented by the City, stating that even though almost 94% of inhabitants ages 15 to 17 attended secondary school, only 26.2% above 24 years of age completed it, see Dirección General de Estadística y Censos, “Situación educativa de la población de Buenos Aires. Censo 2010,” 12, 14.

time of the first meetings.<sup>782</sup> Education is mentioned as a characteristic of the Victims who present themselves as more confident, reflective, and with a higher capacity to transmit what they want, and to understand how to use the available safety tools.<sup>783</sup> Economic resources enable Victims to access other means of help (e.g. counselling and lawyers),<sup>784</sup> and social resources are determined by the social environment of Victims that may make them meet with their rights as embedded in their daily life (e.g. working environments, schools of their children, organizations, and merely listening to random comments).<sup>785</sup> Life experiences can overcome the lack of rights awareness based on the lack of secondary education.<sup>786</sup> However, the personal capacity and interest of Victims is determinant in enabling the absorption of legal and general information.<sup>787</sup>

Victims seem to recognize, during the first meetings, general rights that are available in human rights treaties. Service providers observe that Victims from that group tend to recognize the right (i) not to be physically and psychologically abused,<sup>788</sup> (ii) not to be threatened,<sup>789</sup> (iii) to be respected,<sup>790</sup> (iv) to report an abuse,<sup>791</sup> (v) to justice,<sup>792</sup> (vi) to be informed on rights and possibilities available to participate in the preliminary investigation stage,<sup>793</sup> (vii) to have their views respected (e.g. their desire to mediate),<sup>794</sup> (viii) to child support and to share family obligations,<sup>795</sup> (ix) to a different way of life,<sup>796</sup> and (x) to request a jail sentence or an exclusion of the abuser from their homes.<sup>797</sup>

#### 4.5.2.2. *Tool for Empowerment*

The provision of legal and general information, referrals, and psychological assistance to Victims during the legal procedure are considered tools that empower Victims. Those tools are offered by service providers and considered unique if compared to the ones provided by other organizations.<sup>798</sup> On a lower scale, granting temporary financial assistance is also considered a tool for empowerment. Interviewees explain

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<sup>782</sup> Psychologist, SP 003; Law Student, SP 005; Psychologist, SP 006; Professor of Philosophy, SP 011; Psychologist, SP 012; Social Worker, SP 007; Psychologist, SP 024; Psychologist, SP 026; Professor of Philosophy, SP 011; Psychologist, SP 015.

<sup>783</sup> Psychologist, SP 006.

<sup>784</sup> Social Worker, SP 007; Psychologist, SP 024.

<sup>785</sup> Professor of Philosophy, SP 011; Psychologist, SP 026.

<sup>786</sup> Law Student, SP 005.

<sup>787</sup> Psychologist, SP 012; Psychologist, SP 023; Psychologist, SP 024; Lawyer, SP 008; Psychologist, SP 015; Law Student, SP 005.

<sup>788</sup> Psychologist, SP 003; Law Student, SP 005; Student, SP 010; Professor of Philosophy, SP 011.

<sup>789</sup> Psychologist, SP 023.

<sup>790</sup> Psychologist, SP 015.

<sup>791</sup> Psychologist, SP 003; Law Student, SP 005; Social Worker, SP 007; Lawyer, SP 020.

<sup>792</sup> Psychologist, SP 026.

<sup>793</sup> Psychologist, SP 006; Social Worker, SP 007; Psychologist, SP 025.

<sup>794</sup> Psychologist, SP 006.

<sup>795</sup> Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 023; Psychologist, SP 026.

<sup>796</sup> Psychologist, SP 012.

<sup>797</sup> Lawyer, SP 020.

<sup>798</sup> Psychologist, SP 004.

that these tools for empowerment are related to their given task within the PPO.<sup>799</sup> One interviewee, however, considers that OFAVyT is unable to grant any empowering tools because of the limited time assigned for meetings.<sup>800</sup>

Service providers, agreeing with key civil servants and justice providers, state that complaints embed other problems. It is *essential* for Victims to know general information about other questions that are related to their problems, yet beyond their legal proceedings.<sup>801</sup> General information is a tool for empowerment because it facilitates further options for Victims.<sup>802</sup> As expressed by one lawyer: *General information constitutes empowerment.*<sup>803</sup>

Victims usually have limited understanding about the judicial system they have entered when submitting complaints.<sup>804</sup> Service providers state that it is *essential* that Victims become aware of the legal aspects of their complaints,<sup>805</sup> and that the *legal assistance*, more than legal information, gives them the chance to know their legal options.<sup>806</sup> Legal information allows Victims to gain legal tools to control the extent to which court decisions are enforced (e.g. preventive measures) and to activate procedural requirements.<sup>807</sup> Victims also gain the needed knowledge to *face* the legal procedure.<sup>808</sup> Receiving information about the legal procedure gives Victims confidence and stimulates their active role.<sup>809</sup>

Psychological assistance offered by service providers gives the necessary support for Victims to handle legal and general information.<sup>810</sup> The psychological support is also a determinant factor for Victims to leave the violent environment in view of the emotional burden carried by Victims.<sup>811</sup> Moreover, the psychological assistance gives Victims strength to face the legal procedure and emotional support to activate referrals.<sup>812</sup> It is important that Victims understand the context they are in, as a prerequisite to effectively respond to requests and activate referrals.<sup>813</sup>

Service providers highlight the importance of referring Victims to psychological therapy to transit their distress and get away from their role of “victims” within their relationships and, therefore, preventing them from falling into another abusive

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<sup>799</sup> Psychologist, SP 013; Social Worker, SP 007.

<sup>800</sup> Psychologist, SP 015.

<sup>801</sup> Psychologist, SP 003; Psychologist, SP 009; Psychologist, SP 012; Psychologist, SP 014; Psychologist, SP 025; Psychologist, SP 026.

<sup>802</sup> Lawyer, SP 008.

<sup>803</sup> Lawyer, SP 016.

<sup>804</sup> Psychologist, SP 022.

<sup>805</sup> Psychologist, SP 009.

<sup>806</sup> Psychologist, SP 014; Lawyer, SP 017.

<sup>807</sup> Student, SP 010; Law Student, SP 005.

<sup>808</sup> Psychologist, SP 003; Lawyer, SP 002.

<sup>809</sup> Student, SP 010.

<sup>810</sup> Psychologist, SP 004; Psychologist, SP 003.

<sup>811</sup> Law Student, SP 005; Psychologist, SP 014; Lawyer, SP 017; Psychologist, SP 022; Psychologist, SP 026.

<sup>812</sup> Psychologist, SP 013; Student, SP 010.

<sup>813</sup> Psychologist, SP 012.

relationship.<sup>814</sup> Referrals to shelters, welfare programmes, and preventive measures are also perceived as empowering Victims, because they cut the ties of dependency.<sup>815</sup> Moreover, the granting of temporary financial assistance is an element that empowers, because it assists Victims to temporarily overcome the economic dependency on the abuser, enabling them to continue with the legal procedure.<sup>816</sup>

In sum, Victims are purposely placed in the *main player's role* during meetings because this contributes to their empowerment.<sup>817</sup> Service providers use meetings as a space to trigger reflection for further actions.<sup>818</sup> The meetings become a psycho-educational space where Victims and service providers speak about domestic violence, where service providers offer Victims information about the legal procedure and about helpful referrals, and where immediate economic needs are resolved.<sup>819</sup> Moreover, service providers may accompany Victims to court hearings and to mediation in order to provide them with the necessary support during these attempts at conflict resolution.<sup>820</sup>

### 4.5.3. Rights Enablement

This sub-section on rights enablement analyses the tools available for Victims at OFAVyT to enable the exercise of their rights (4.5.3.1.) and how meetings enable the understanding of legal options (4.5.3.2.). Moreover, this sub-section analyses how different characteristics of Victims influence the enablement of rights (4.5.3.3.). The possibilities of Victims to achieve a resolution to their conflicts by means of complaints are also contemplated (4.5.3.4.), together with the importance of collaboration with other organizations (4.5.3.5.) and the bureaucratic barriers (4.5.3.6.) since they are mentioned by service providers as important in the assistance to Victims. The extent to which trust in Legal Organizations is an important element to rights enablement is also analysed (4.5.3.7.).

#### 4.5.3.1. OFAVyT

Service providers perceive their service as an accompaniment to support Victims in their legal procedure.<sup>821</sup> Support relates to the space provided to Victims to be heard and to receive comprehensive assistance.<sup>822</sup> OFAVyT enables Victims to position themselves differently in their conflicts. It *empowers and strengthens* the position of

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<sup>814</sup> Law Student, SP 005; Psychologist, SP 006; Lawyer, SP 008; Psychologist, SP 022; Psychologist, SP 023; Psychologist, SP 025; Psychologist, SP 026.

<sup>815</sup> Law Student, SP 005; Student, SP 018; Psychologist, SP 023.

<sup>816</sup> Psychologist, SP 003; Psychologist, SP 004; Lawyer, SP 016; Lawyer, SP 017; Psychologist, SP 023.

<sup>817</sup> Lawyer, SP 008.

<sup>818</sup> Professor of Philosophy, SP 011.

<sup>819</sup> Psychologist, SP 023.

<sup>820</sup> Psychologist, SP 026.

<sup>821</sup> Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>822</sup> Law Student, SP 005; Social Worker, SP 007; Psychologist, SP 009; Lawyer, SP 008; Professor of Philosophy, SP 011; Psychologist, SP 013; Student, SP 018; Psychologist, SP 021; Student, SP 010; Psychologist, SP 012; Psychologist, SP 013; Psychologist, SP 025; Psychologist, SP 023; Psychologist, SP 026; Psychologist, SP 019.



Victims and assists them to move away from their place of helplessness.<sup>823</sup> Moreover, OFAVyT serves as the nexus between conflicts of Victims and Legal Organizations that can assist in dealing with those conflicts,<sup>824</sup> and between conflicts of Victims and prosecutor units, informing prosecutors on the characteristics of Victims and their violent environments.<sup>825</sup> The delivery of general and legal information<sup>826</sup> and advice<sup>827</sup> to Victims is also considered a main advantage, and equally important for the delivery of physiological assistance. General information improves the access to justice of Victims<sup>828</sup> and offers them a new (and many times different) point of view of their problems together with the possibility to start developing plans to overcome them.<sup>829</sup> Providing Victims with referrals and a comprehensive assistance is mentioned in this context as a means to enable their possibilities to exercise those plans.<sup>830</sup> Legal information improves, free of charge, the understanding of rights and obligations and of the differences between their civil and criminal complaints.<sup>831</sup> Legal information also assists in the understanding of the implications of the criminal procedure.<sup>832</sup>

Many Victims feel disconnected from the legal process, even though the comprehensive assistance provided by OFAVyT *empowers Victims* to exercise a different position within their conflicts.<sup>833</sup> The legal information and the company provided by OFAVyT to Victims is a means of assisting them to connect with the legal procedure.<sup>834</sup> Yet, the assistance is only effective in the short term, and Victims have to follow psychological therapy and other referrals (e.g. bar association) if they want to see results in the long term.<sup>835</sup> It is also important that OFAVyT assists Victims to strengthen their own resources.<sup>836</sup>

All interviewees were able to recognize at least two of the above-mentioned advantages of the assistance provided by OFAVyT. However, one interviewee mentions no advantages of such a division.<sup>837</sup>

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<sup>823</sup> Psychologist, SP 014; Psychologist, SP 022.

<sup>824</sup> Psychologist, SP 014; Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>825</sup> Psychologist, SP 026; Lawyer, SP 020; Lawyer & Psychologist\_Joint Free Interview, SP 035.

<sup>826</sup> Psychologist, SP 009; Psychologist, SP 004; Psychologist, SP 001.

<sup>827</sup> Social Worker, SP 007; Psychologist, SP 004; Lawyer, SP 002; Lawyer, SP 016.

<sup>828</sup> Psychologist, SP 003; Psychologist, SP 019.

<sup>829</sup> Psychologist, SP 022; Law Student, SP 005; Psychologist, SP 003; Psychologist, SP 001; Student, SP 018.

<sup>830</sup> Psychologist, SP 022; Psychologist, SP 025; Psychologist, SP 021.

<sup>831</sup> Psychologist, SP 023; Psychologist, SP 025; Psychologist, SP 012; Psychologist\_Free Interview, SP 027; Psychologist, SP 024; Lawyer, SP 020.

<sup>832</sup> Psychologist, SP 019; Psychologist, SP 022; Psychologist, SP 024; Psychologist, SP 014; Lawyer, SP 017; Psychologist, SP 003.

<sup>833</sup> Lawyer, SP 008; Professor of Philosophy, SP 011; Psychologist, SP 003.

<sup>834</sup> Lawyer, SP 002; Social Worker, SP 007; Lawyer, SP 008; Student, SP 010; Lawyer, SP 016; Lawyer, SP 020; Psychologist, SP 023; Psychologist, SP 024; Psychologist, SP 026.

<sup>835</sup> Psychologist, SP 006.

<sup>836</sup> Psychologist, SP 004.

<sup>837</sup> Psychologist, SP 015.

#### 4.5.3.2. Meetings

Service providers were asked whether during the first meetings Victims are able to understand their legal options (substantive and procedural) to resolve their conflicts. The majority of interviewees consider that they are either “rarely” or “sometimes” able to understand those options. No service provider considers that first meetings “never” or “always” assist Victims in understanding their legal options, while three interviewees offer neutral answers (“neither never nor always”).<sup>838</sup>

Victims access the PPO without understanding what the implications triggered by their complaints are.<sup>839</sup> In addition to the initial unfamiliarity, the domestic violence experienced by many Victims is detrimental to their possibilities to understand and elaborate on the provided information. The openness of Victims to listen is also conditioned by their emotional burden and the extent to which they are immersed in their problems.<sup>840</sup> Given all of these circumstances the judicial system is perceived as being too complex to enable most Victims to understand their legal options and rights,<sup>841</sup> and the first meetings are too short for Victims to start to grasp all of that information.<sup>842</sup> Moreover, some service providers explain that when Victims arrive at OFAVyT *no judicial agent took time [before] to explain [to them] that what they are going through is not accepted by law.*<sup>843</sup> This group considers that the judicial system is dissociated from people and governed by its own *corporate* rules.<sup>844</sup> People have no means to participate in the selection of justice providers or to control their activities, while those justice providers with law degrees are not trained to serve their community. As one interviewee notes, lawyers *dehumanize Victims by speaking to them in a language that is incomprehensible to anyone who has not studied law and [lawyers] do not know how to match the legal procedure with the needs of Victims.*<sup>845</sup> As a consequence of these two facts, people ignore their legal options and have limited chances to understand them when encountering justice providers and service providers.<sup>846</sup>

Service providers perceive that the difficulties that legal options entail are not adapted to the problems of Victims<sup>847</sup> and, even when they try to explain to Victims by using

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<sup>838</sup> Psychologist, SP 013; Lawyer, SP 017; Lawyer, SP 020.

<sup>839</sup> Psychologist, SP 015; Psychologist\_Free Interview, SP 027.

<sup>840</sup> Law Student, SP 005; Professor of Philosophy, SP 011; Psychologist, SP 012; Psychologist, SP 021; Psychologist, SP 024; Psychologist, SP 026; Lawyer, SP 016; Psychologist, SP 023.

<sup>841</sup> Psychologist, SP 022; Psychologist\_Free Interview, SP 027.

<sup>842</sup> Psychologist, SP 006.

<sup>843</sup> Psychologist, SP 004.

<sup>844</sup> Psychologist, SP 003.

<sup>845</sup> Ibid.; Psychologist, SP 004.

<sup>846</sup> Practitioners and scholars also recognize that to improve access to justice it is necessary to re-design legal education and to train students to legally serve the population. For example, Leering proposes that legal education has to follow a “reflective practice” approach. This approach considers that law students have to be trained to respond to the demands of society because lawyers exist to serve society. In her words, the “reflective practice model also has the potential to reform and humanize legal education and the profession by fostering greater sensitivity to ethical and cultural competency issues, providing the opportunity to reframe law as a healing profession,” see Leering, “Conceptualizing Reflective Practice for Legal Professionals,” 106.

<sup>847</sup> Student, SP 010; Professor of Philosophy, SP 011.

plain language, sometimes it is not enough.<sup>848</sup> Legal options are considered more difficult to be understood by the Victims with lower levels of education and by those who experience for the first time a legal procedure and/or who have not obtained previous legal assistance.<sup>849</sup> The socio-cultural level, social position, and the capacity of Victims to understand new concepts also determine their capacity to understand legal options.<sup>850</sup> Another component that may inhibit Victims from understanding their legal options is the expectation they have prior to first meetings. Service providers state that it is more difficult for Victims to understand those expectations if these are not related to the options provided by the judicial system.<sup>851</sup> Moreover, Victims often attend meetings with false information about complaints and its consequences because the accused purposely distort the information to continue dominating Victims.<sup>852</sup>

Most service providers consider that meetings at OFAVyT increase the legal understanding of Victims with the provision of information, orientation, and referrals.<sup>853</sup> Listening to the needs, wants and ideas, or strategies developed by Victims to deal with their conflicts enables the provision of tailor-made information and orientation.<sup>854</sup> During the first meetings, however, service providers focus on clarifying for Victims their legal situation and calming them down.<sup>855</sup> Victims are *flattered* in an effort to increase their confidence to sustain the legal procedure,<sup>856</sup> and those Victims who feel supported and who build trust in the PPO are perceived as experiencing an increase in their understanding of legal options and in their capacity to resolve conflicts.<sup>857</sup> False beliefs are also *demystified* when Victims understand their rights and the way the judicial system functions.<sup>858</sup> This guides Victims to transit through the process, and service providers inform Victims even when they realize that they do not fully understand.<sup>859</sup> The professional degrees of service providers are viewed, by some interviewees, as a source of credibility of the information they deliver. Some Victims, by believing in the validity of that information, make efforts to understand, and hence increase their understanding.<sup>860</sup>

However, a group of interviewees reflect that meetings neither increase nor reduce the legal understanding of Victims.<sup>861</sup> These service providers note that OFAVyT *just*

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<sup>848</sup> Professor of Philosophy, SP 011.

<sup>849</sup> Psychologist, SP 001; Psychologist, SP 012; Psychologist, SP 006.

<sup>850</sup> Lawyer, SP 002; Lawyer, SP 008; Psychologist, SP 009; Student, SP 010.

<sup>851</sup> Social Worker, SP 007; Psychologist, SP 014.

<sup>852</sup> Psychologist, SP 025.

<sup>853</sup> Psychologist, SP 001; Lawyer, SP 002; Psychologist, SP 006; Lawyer, SP 008; Psychologist, SP 009; Psychologist, SP 021; Student, SP 018; Lawyer, SP 020.

<sup>854</sup> Psychologist, SP 003; Lawyer, SP 008; Psychologist, SP 014; Lawyer, SP 020.

<sup>855</sup> Psychologist, SP 012.

<sup>856</sup> Psychologist, SP 004.

<sup>857</sup> Student, SP 010; Student, SP 018; Lawyer, SP 020.

<sup>858</sup> Lawyer, SP 016; Psychologist, SP 024; Psychologist, SP 025; Psychologist, SP 026.

<sup>859</sup> Psychologist, SP 023.

<sup>860</sup> Law Student, SP 005.

<sup>861</sup> Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 012; Psychologist, SP 013; Psychologist, SP 015; Psychologist, SP 019.

facilitates information<sup>862</sup> and that that information cannot overcome the emotional conditions of Victims.<sup>863</sup> Consequently, Victims position themselves in a passive role after they share their problems.<sup>864</sup>

Successive meetings with Victims are also considered by most service providers as contributing to legal understanding. Successive meetings are *enriching* for Victims<sup>865</sup> because they recall prior concepts,<sup>866</sup> eliminate further (and new) doubts and questions,<sup>867</sup> and reduce uncertainties.<sup>868</sup> Nothing is mentioned by service providers about how the distress of Victims changes when successive meetings are held. Service providers express that during the successive meetings they *explain to Victims the process and their rights; Victims get empowered, and do not suffer that much their transit through the judicial system*.<sup>869</sup> Furthermore, the successive meetings *empower the resources of Victims*.<sup>870</sup> The assistance offered by service providers in subsequent meetings strengthens the trust of Victims in justice because those meetings represent the symbolic message that the judicial system cares about them.<sup>871</sup> Successive meetings are also perceived to develop certainty in Victims to continue in their attempt to resolve their conflicts,<sup>872</sup> and in some cases those meetings are an incentive for Victims to not drop their complaints.<sup>873</sup> Service providers who state that successive meetings with Victims neither reduce nor increase the legal understanding explain that meetings still focus on past facts and do not offer new perspectives.<sup>874</sup> Moreover, that group views the legal procedure as *comprising* conflicts in legal documents.<sup>875</sup> Lastly, an interviewee explains that there is seldom a relation between conflict resolution and the number of meetings held with Victims.<sup>876</sup>

#### 4.5.3.3. *Characteristics of Victims*

##### 4.5.3.3.1. Sense of Responsibilities

Most service providers consider it important for the enablement of conflict resolution that Victims recognize their responsibility in their conflicts. Few interviewees, however, believe that Victims do not have any responsibility but that what matters is that they recognize their place and position within those conflicts.<sup>877</sup> The accused is

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<sup>862</sup> Social Worker, SP 007.

<sup>863</sup> Professor of Philosophy, SP 011; Psychologist, SP 013.

<sup>864</sup> Psychologist, SP 015.

<sup>865</sup> Psychologist, SP 001.

<sup>866</sup> Psychologist, SP 014.

<sup>867</sup> Lawyer, SP 002.

<sup>868</sup> Psychologist, SP 025; Lawyer, SP 002; Psychologist, SP 003; Psychologist, SP 006; Lawyer, SP 008; Professor of Philosophy, SP 011; Psychologist, SP 019.

<sup>869</sup> Lawyer, SP 020.

<sup>870</sup> Psychologist, SP 026.

<sup>871</sup> Psychologist, SP 022.

<sup>872</sup> Psychologist, SP 023; Psychologist, SP 024; Law Student, SP 005; Student, SP 010.

<sup>873</sup> Psychologist, SP 024.

<sup>874</sup> Psychologist, SP 015; Lawyer, SP 016.

<sup>875</sup> Psychologist, SP 015.

<sup>876</sup> Student, SP 018.

<sup>877</sup> Social Worker, SP 007; Lawyer, SP 020.

perceived by this group as being the sole person responsible.<sup>878</sup> Most service providers, nonetheless, consider it important that Victims recognize their responsibility.<sup>879</sup> There are two types of recognized responsibilities: *self-responsibility*<sup>880</sup> and legal responsibility.<sup>881</sup> Self and legal responsibilities trigger change,<sup>882</sup> move Victims away from the label of “victims,” and strengthen their autonomy and role to overcome conflicts.<sup>883</sup> Victims have higher chances to overcome and prevent further conflicts because they understand their problems more comprehensively and they start searching for options.<sup>884</sup> Their participation in finding solutions increases and their expectations do not lie exclusively in the outcome of complaints, though most of the time these Victims continue their legal procedures.<sup>885</sup>

Service providers recognize that Victims improve their self and legal responsibility based on their active participation in meetings, where they propose alternatives for the resolution of their conflicts,<sup>886</sup> placing themselves as *protagonists of change*.<sup>887</sup> Service providers also note that it is *easier* for them to guide and advise Victims who recognize their responsibility in resolving their conflicts because they are already aware of the limitations of the external assistance.<sup>888</sup> They are not *objects* but *subjects* of their conflicts.<sup>889</sup> Lastly, those Victims often arrive at the first meetings with an understanding of their rights and undergoing physiological therapy.<sup>890</sup>

#### 4.5.3.3.2. Perception of Personal Capacity

Service providers perceive that most Victims do not trust in their personal capacity to resolve conflicts.<sup>891</sup> Personal distrust is understood as a consequence of the devaluation process that Victims experience during submissive relationships.<sup>892</sup> However, interviewees, with one exception,<sup>893</sup> consider that self-perception of Victims on their capacity to resolve conflicts either “contributes” or “highly contributes” to conflict resolution. Service providers explain that it is fundamental that Victims recognize themselves as capable and self-sufficient to find alternatives and to sustain

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<sup>878</sup> Lawyer, SP 020.

<sup>879</sup> Psychologist, SP 003.

<sup>880</sup> Psychologist, SP 023.

<sup>881</sup> Psychologist, SP 024.

<sup>882</sup> Psychologist, SP 014.

<sup>883</sup> Psychologist, SP 015.

<sup>884</sup> Psychologist, SP 004; Student, SP 010; Psychologist, SP 015; Psychologist, SP 021; Psychologist, SP 022; Psychologist, SP 023; Law Student, SP 005; Professor of Philosophy, SP 011.

<sup>885</sup> Psychologist, SP 006; Psychologist, SP 012; Psychologist, SP 026.

<sup>886</sup> Lawyer, SP 016; Lawyer, SP 002.

<sup>887</sup> Lawyer, SP 008.

<sup>888</sup> Psychologist, SP 026.

<sup>889</sup> Psychologist, SP 001; Psychologist, SP 009; Psychologist, SP 013; Psychologist, SP 019; Psychologist, SP 025.

<sup>890</sup> Student, SP 018.

<sup>891</sup> Lawyer, SP 020; Psychologist, SP 025.

<sup>892</sup> Lawyer, SP 020.

<sup>893</sup> Ibid.

the resolution of their conflicts,<sup>894</sup> because *in order to do, you need to believe; and in order to believe, you need to believe in yourself*.<sup>895</sup> Service providers explain that perceptions of personal capacity relate to the perception of personal tools and resources,<sup>896</sup> and service providers build on them during meetings.<sup>897</sup> In addition, the more Victims believe in their capacity to resolve their conflicts, the less *emotionally vulnerable* they are to return to the abusers<sup>898</sup> and the higher the chances are for them to continue with their complaints.<sup>899</sup> The recognition of capacities is viewed as a process in which Victims start to recognize *their place in the conflict, start to get empowered, and start to recognize their own capacities*.<sup>900</sup> Service providers perceive that the sole fact of meeting conveys confidence to Victims and increases the perception of their capacity to resolve conflicts.<sup>901</sup> However, service providers recognize that *wanting to solve a conflict is [ultimately] a personal decision*.<sup>902</sup>

#### 4.5.3.3.3. Individualities

Service providers consider that gender, economic independence, emotional elements (e.g. fear, stress, sadness), living in abusive relationships, and social context are the main individual characteristics that affect the possibilities of Victims to resolve their conflicts. Age, income level, and distrust in public institutions, on the contrary, are considered the characteristics that less affect the possibilities of Victims to resolve their conflicts. The level of education and knowledge of rights are considered to somehow affect the possibilities of Victims to resolve their conflicts, yet not as much as gender, economic independence, emotional elements, living in abusive relationships, and social context.

Gender is the fixed characteristic that service providers consider that most affects the possibilities of Victims to resolve their conflicts. The social context is dynamic and may change when Victims gain economic independence and/or overcome emotional elements. Living in abusive relationships diminishes the chances of Victims to resolve their conflicts, and, therefore, it is more difficult for those who live in the same household to overcome domestic violence. The fact that income level is considered less a characteristic affecting the possibility of Victims to resolve their conflicts may imply that access to opportunities to trigger change do not depend exclusively on the economic capacity of Victims, and that Victims might have ways to overcome economic dependency by, for example, securing employment. The economic independence might be considered more as a way of self-assurance, rather than as a

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<sup>894</sup> Psychologist, SP 003; Student, SP 010; Psychologist, SP 015; Psychologist, SP 022; Psychologist, SP 006; Lawyer, SP 016; Psychologist, SP 019; Psychologist, SP 026.

<sup>895</sup> Professor of Philosophy, SP 011.

<sup>896</sup> Psychologist, SP 004; Psychologist, SP 024.

<sup>897</sup> Psychologist, SP 009; Psychologist, SP 014.

<sup>898</sup> Law Student, SP 005.

<sup>899</sup> Student, SP 010; Psychologist, SP 013; Student, SP 018; Psychologist, SP 012.

<sup>900</sup> Social Worker, SP 007; Lawyer, SP 008; Lawyer, SP 002.

<sup>901</sup> Lawyer, SP 017.

<sup>902</sup> Psychologist, SP 023.

means to access for help. The prior experience of violence is also highlighted as a characteristic that affects the possibilities of Victims to resolve their conflicts.

#### 4.5.3.4. *Conflict Resolution*

The judicial system is considered unable to provide Victims with an effective conflict resolution.<sup>903</sup> A restorative justice approach is pointed to as better able to achieve conflict resolution;<sup>904</sup> and, within the current judicial system, probation is pointed to as the best alternative available to improve the resolution of conflicts.<sup>905</sup> Mediation, however, is not considered as an alternative by any service provider.

Service providers perceive that the judicial system is not adapted for Victims because domestic violence demands a process that is adjusted to their individual needs and times.<sup>906</sup> The needs of Victims claim a multidisciplinary approach (e.g. covering legal, social, physiological, and housing aspects)<sup>907</sup> that requires coordination between different providers and organizations.<sup>908</sup> Victims also have to receive support for their family environment, especially children.<sup>909</sup> Moreover, to enable conflict resolution that process has to incorporate systematic follow-ups on the developments of the solutions and a deeper approach to the behavioural problem of the accused (e.g. violent personality, alcoholism). Some service providers consider that an effective conflict resolution highly depends on the decision of the accused to cease with abusive behaviours.<sup>910</sup> Other interviewees consider that it highly depends on the decision of Victims to definitely end abusive relationships.<sup>911</sup>

Service providers note that the level of empowerment and resources Victims have at the moment they submit complaints determine an effective conflict resolution, even when the judicial system may contribute to conflict resolution.<sup>912</sup> Moreover, large-scale advertisements are considered important in order to make society aware of how to build healthy relationships.<sup>913</sup> Only one interviewee considers that an effective conflict resolution for Victims depends on the penalty applied to the abuser.<sup>914</sup> Yet, even in this case, the interviewee recognizes that the application of penalties and the assistance for Victims to strengthen autonomy are equally important.

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<sup>903</sup> Lawyer, SP 002; Psychologist, SP 025.

<sup>904</sup> Lawyer, SP 020.

<sup>905</sup> Lawyer, SP 002; Psychologist, SP 025.

<sup>906</sup> Psychologist, SP 004; Lawyer, SP 008.

<sup>907</sup> Psychologist, SP 012; Psychologist, SP 006; Lawyer, SP 008; Psychologist, SP 014; Psychologist, SP 015; Lawyer, SP 017; Psychologist, SP 019; Lawyer, SP 020.

<sup>908</sup> Psychologist, SP 019.

<sup>909</sup> Psychologist, SP 006; Lawyer, SP 008; Lawyer, SP 020.

<sup>910</sup> Social Worker, SP 007; Student, SP 010; Psychologist, SP 021; Psychologist, SP 026.

<sup>911</sup> Psychologist, SP 001; Law Student, SP 005; Psychologist, SP 009; Professor of Philosophy, SP 011; Lawyer, SP 016; Psychologist, SP 023.

<sup>912</sup> Student, SP 018; Psychologist, SP 024.

<sup>913</sup> Student, SP 018.

<sup>914</sup> Psychologist, SP 003.

Service providers perceive that OFAVyT contributes to achieving the above-mentioned effective conflict resolution by means of their assistance free of charge,<sup>915</sup> their multidisciplinary approach to conflicts,<sup>916</sup> and their explanation to Victims of the meaning of probation.<sup>917</sup> OFAVyT also assists prosecutor units to grant preventive measures to Victims, and assists Victims in becoming aware of the problems they are living with and the options available.<sup>918</sup> Listening to Victims and the further follow-ups and referrals performed by OFAVyT are also considered as contributing to achieving effective conflict resolution.<sup>919</sup> Contributions provided by OFAVyT are perceived as restricted because they have limited resources to overcome the complexity of domestic violence, and Victims have to take a very active role if they want to resolve their conflicts.<sup>920</sup> Moreover, service providers believe that Victims are required to take a very active role, yet the judicial system cannot return to them a court decision or a punishment for the accused.<sup>921</sup> An interviewee explains that, *Passing through justice does not change people; it generates different conditions that may favour processes of personal change*.<sup>922</sup> All but one service provider perceives that OFAVyT can somehow contribute to an effective conflict resolution. That service provider perceives that many times the intervention complicates, more than contributes to, the *daily lives* of Victims.<sup>923</sup>

#### 4.5.3.5. Collaboration with State Organizations and NGOs

A smooth and formalized collaboration between state organizations is needed to obtain a *restorative result*<sup>924</sup> and can favour the assistance of OFAVyT.<sup>925</sup> Service providers explain that they have *need of other state organizations*<sup>926</sup> because the *complexity of the problem of domestic violence requires not only ... a multidisciplinary approach, but also ... an inter-state organizational approach*.<sup>927</sup> The *inter-state organizational approach* acts as a complement for the services that OFAVyT and the PPO do not perform (e.g. delivery of subsidies, health care, and counselling).<sup>928</sup> The Ministry of Social Development is the only state organization that service providers mention by name, and its

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<sup>915</sup> Psychologist, SP 023.

<sup>916</sup> Psychologist, SP 021; Psychologist, SP 026.

<sup>917</sup> Lawyer, SP 002.

<sup>918</sup> Law Student, SP 005; Lawyer, SP 008; Student, SP 010; Psychologist, SP 013; Psychologist, SP 014; Student, SP 018; Psychologist, SP 026; Psychologist, SP 025.

<sup>919</sup> Lawyer, SP 008; Psychologist, SP 013; Student, SP 018; Psychologist, SP 019; Psychologist, SP 022; Lawyer, SP 017.

<sup>920</sup> Psychologist, SP 003; Psychologist, SP 006; Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 024.

<sup>921</sup> Psychologist, SP 004.

<sup>922</sup> Professor of Philosophy, SP 011; Lawyer, SP 016.

<sup>923</sup> Psychologist, SP 015.

<sup>924</sup> Lawyer, SP 020.

<sup>925</sup> Lawyer, SP 002; Psychologist, SP 003; Psychologist, SP 004; Law Student, SP 005; Social Worker, SP 007; Lawyer, SP 008; Psychologist, SP 014; Lawyer, SP 016; Student, SP 018; Psychologist, SP 019; Psychologist, SP 022; Psychologist, SP 024; Psychologist, SP 025.

<sup>926</sup> Psychologist, SP 013.

<sup>927</sup> Psychologist, SP 021.

<sup>928</sup> Psychologist, SP 022; Student, SP 018.



collaboration is considered essential in order to ensure a comprehensive conflict resolution.<sup>929</sup> Collaboration with other state organizations and NGOs is considered essential for cases with a high risk of harm.<sup>930</sup> A smooth collaboration between organizations allows Victims to approach the organization they have been referred to with accurate expectations,<sup>931</sup> yet the needed articulation to enable a proper collaboration does not exist, *unfortunately*.<sup>932</sup>

OFAVyT is not integrated with other organizations besides the PPO,<sup>933</sup> and a service provider explains that inter-state organizational agreements can assist in formalizing and standardizing collaborations.<sup>934</sup> Lastly, another service provider highlights that the collaboration with other state organizations and NGOs is also needed to articulate training for providers.<sup>935</sup>

#### 4.5.3.6. Bureaucratic Barriers

Providers are perceived, generally, as lacking a gender perspective approach and a proper understanding of the characteristics of Victims and the vulnerable condition they present at the time they submit complaints.<sup>936</sup> Stereotypes are still present in some providers and are revived with domestic violence complaints.<sup>937</sup> Moreover, the characteristics of domestic violence are not properly contemplated by the legal procedure and many times, when the judicial system grants a decision, problems have already changed.<sup>938</sup> As noted by an interviewee, *The times of the violence are not the same times as those of the judicial system*.<sup>939</sup>

Legal Organizations that respond to civil and criminal proceedings and that operate in respect of the conflicts of Victims are considered a bureaucratic barrier because Victims need to respond to their requests and the duality confuses them.<sup>940</sup> Moreover, service providers perceive a disparity in the requests to Victims and those to the accused. They explain that Victims are called many times to different organizations, needing to reschedule their activities, but the accused is hardly ever *bothered*.<sup>941</sup> Legal

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<sup>929</sup> Psychologist, SP 012; the Ministry of Social Development was created in 2003 and is in charge of promoting social integration and human development, see Poder Ejecutivo de la Nación, *Decreto Reglamentario 141/2003*, art 3.

<sup>930</sup> Psychologist, SP 006.

<sup>931</sup> Psychologist, SP 023.

<sup>932</sup> Service providers mention only “some” collaboration with the Ministry of Social Development, Psychologist, SP 009; Lawyer, SP 017; Psychologist, SP 015.

<sup>933</sup> Psychologist, SP 015; Professor of Philosophy, SP 011.

<sup>934</sup> Lawyer, SP 017.

<sup>935</sup> Law Student, SP 005.

<sup>936</sup> Social Worker, SP 007; Psychologist, SP 004; Psychologist, SP 022.

<sup>937</sup> Psychologist, SP 003; Student, SP 018; Lawyer, SP 020.

<sup>938</sup> Psychologist, SP 014.

<sup>939</sup> Psychologist, SP 012.

<sup>940</sup> Professor of Philosophy, SP 011; Psychologist, SP 026; Psychologist, SP 019.

<sup>941</sup> Lawyer, SP 002; Psychologist, SP 012; Psychologist, SP 014; Lawyer, SP 016; Student, SP 018; Psychologist, SP 019; Lawyer, SP 020; Psychologist, SP 021; Psychologist, SP 022; Psychologist, SP 023; Psychologist, SP 025.

Organizations do not adapt the procedures to the level of understanding of Victims,<sup>942</sup> and service providers note that the civil and criminal proceedings are *foreign* to them.<sup>943</sup> Some providers also use legal terminology to communicate without considering actual understanding.<sup>944</sup> As mentioned by an interviewee, the judicial system *expels and alienates Victims*.<sup>945</sup> The request for evidence is perceived by service providers as another bureaucratic barrier for domestic violence cases, because most of the time facts occur in the private sphere, and Victims have to think of different ways to enable further evidence to prove facts.<sup>946</sup>

The excessive demand for reports from the prosecutors to OFAVyT diminishes the quality of assistance too, bureaucratizing the conflicts and re-victimizing Victims with repetitive calls.<sup>947</sup> Service providers can also be called to testify in trial about their reports, and some feel that the assistance is too short to deliver a report that might need to be revalidated at trial.<sup>948</sup>

#### 4.5.3.7. Trust

##### 4.5.3.7.1. Trust in Legal Organizations

Service providers consider it “important” or “very important” that Victims trust in the capacity of Legal Organizations to help them. In their view, trust in Legal Organizations determines in Victims (i) their attendance, participation, and continuation in the legal procedure;<sup>949</sup> (ii) their release and sharing of information about their problems;<sup>950</sup> and (iii) their way to receive and rely on the suggestions provided.<sup>951</sup> Moreover, the trust in the Legal Organizations increases the feeling of protection and safety of Victims, becoming a tool for empowerment.<sup>952</sup> It also helps to introduce the law in violent relationships that have naturalized the power imbalance and violation of rights.<sup>953</sup>

A small number of service providers consider that the trust of Victims in the performance of the PPO is “not important.”<sup>954</sup> These service providers state that the trust of Victims depends on the trust conveyed by service providers,<sup>955</sup> but not on the

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<sup>942</sup> Professor of Philosophy, SP 011; Psychologist, SP 013; Law Student, SP 005; Psychologist, SP 003; Psychologist, SP 004; Social Worker, SP 007; Psychologist, SP 009; Psychologist, SP 012; Student, SP 018.

<sup>943</sup> Psychologist, SP 015.

<sup>944</sup> Ibid.; Psychologist, SP 022; Law Student, SP 005.

<sup>945</sup> Psychologist, SP 015; Psychologist, SP 023.

<sup>946</sup> Lawyer, SP 008; Social Worker, SP 007; Professor of Philosophy, SP 011; Psychologist, SP 012.

<sup>947</sup> Law Student, SP 005; Psychologist, SP 006; Social Worker, SP 007; Lawyer, SP 008; Professor of Philosophy, SP 011; Psychologist, SP 014; Student, SP 018; Psychologist, SP 026.

<sup>948</sup> Student, SP 018.

<sup>949</sup> Psychologist, SP 022; Psychologist, SP 026; Lawyer, SP 017.

<sup>950</sup> Law Student, SP 005.

<sup>951</sup> Ibid.; Student, SP 010; Psychologist, SP 021; Psychologist, SP 025.

<sup>952</sup> Student, SP 010; Lawyer, SP 002; Psychologist, SP 006.

<sup>953</sup> Psychologist, SP 023; Psychologist, SP 003; Psychologist, SP 014; Student, SP 018.

<sup>954</sup> Psychologist, SP 009; Psychologist, SP 015; Psychologist, SP 004.

<sup>955</sup> Lawyer, SP 008.

image of trust that emanates from Legal Organizations.<sup>956</sup> Other service providers perceive that their actions are framed within Legal Organizations, and, therefore, their actions and answers represent the personality of both the Legal Organization and themselves.<sup>957</sup> Lastly, some service providers consider that even when trust is important, many Victims who start their procedures trusting in Legal Organizations eventually lose that trust and experience frustration.<sup>958</sup> Keeping the trust of Victims in Legal Organizations during the entire legal procedure is considered one of the main challenges and obstacles by a service provider.<sup>959</sup>

#### 4.5.3.7.2. Trust in the Performance of OFAVyT

The trust of Victims in service providers and the extent to which Victims disclose information to service providers are connected. Service providers understand that the intervention of OFAVyT is based on a relationship built on trust,<sup>960</sup> because trust determines smooth communication and the extent to which Victims consider the suggestions or advice.<sup>961</sup> A smooth communication permits service providers to understand the personal characteristics of Victims that they need to overcome to solve their problems.<sup>962</sup> This improves the type of assistance because service providers acquire the essential elements needed for responsible performances.<sup>963</sup> Moreover, Victims may return for further assistance if they trust service providers.<sup>964</sup> An environment of trust during meetings gives Victims safety and company in the personal processes they experience when starting to reflect about domestic violence.<sup>965</sup>

The trust of Victims in the performance of OFAVyT is not considered important for a small number of psychologists.<sup>966</sup> These service providers consider that trust is an arbitrary perception of Victims,<sup>967</sup> and that the presence of trust has a limited contribution to the resolution of conflicts.<sup>968</sup>

#### 4.5.4. Rights Enforcement

This sub-section on rights enforcement analyses, from the view of service providers, what Victims consider to be a favourable result. Furthermore, service providers comment on their perceptions of the chances Victims have to achieve favourable results.

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<sup>956</sup> Psychologist, SP 009.

<sup>957</sup> Psychologist, SP 013.

<sup>958</sup> Psychologist, SP 012.

<sup>959</sup> Professor of Philosophy, SP 011.

<sup>960</sup> Lawyer, SP 008; Psychologist, SP 009; Professor of Philosophy, SP 011.

<sup>961</sup> Psychologist, SP 022; Lawyer, SP 020; Psychologist, SP 026; Law Student, SP 005; Student, SP 018; Psychologist, SP 023; Psychologist, SP 025; Psychologist, SP 006; Social Worker, SP 007; Lawyer, SP 008; Professor of Philosophy, SP 011.

<sup>962</sup> Psychologist, SP 023.

<sup>963</sup> Psychologist, SP 003; Student, SP 010.

<sup>964</sup> Psychologist, SP 004; Psychologist, SP 023; Psychologist, SP 025.

<sup>965</sup> Lawyer, SP 002.

<sup>966</sup> Psychologist, SP 012; Psychologist, SP 015; Psychologist, SP 024.

<sup>967</sup> Psychologist, SP 012.

<sup>968</sup> Psychologist, SP 024.

Service providers perceive that Victims consider a favourable result of their transit through justice if the accused leave them in peace, do not bother them any longer, do not repeat the abuses, and problems end.<sup>969</sup> In essence, to place a limit on the violence they suffered<sup>970</sup> and, in the words of a psychologist, that *the judicial system resolves what they were unable to solve using their own tools*.<sup>971</sup> Service providers perceive that when Victims start legal procedures they are aim-oriented and concerned mostly for a short-term result (e.g. that threats cease).<sup>972</sup> Many Victims want to return to the life they had before meeting the abusers, being able to provide for themselves and for their families.<sup>973</sup> Many Victims also want to enforce a jail sentences for the abusers.<sup>974</sup> Only one service provider mentions that Victims consider a favourable result when they are granted *justice*.<sup>975</sup> Another service provider mentions the importance for some Victims that abusers repair the damage caused.<sup>976</sup> The favourable results considered by Victims are viewed as frequently exceeding the possibilities of the judicial system.<sup>977</sup> In addition, even when many service providers agree on patterns of favourable resolutions in the eyes of Victims, others believe that it is not possible to generalize because the favourable resolutions depend on each case.<sup>978</sup>

Some service providers believe that Victims have few chances to reach resolutions to their conflicts when accessing the judicial system and those chances may increase if Victims receive proper assistance.<sup>979</sup> Other service providers consider that it depends on the expectations that Victims have, and on how those expectations match the tools available in the judicial system.<sup>980</sup> The desire of Victims to resolve their conflicts plays a fundamental role because *in general, the display of conflicts does not [directly] imply a desire to solve them; and, [in those cases], complaints are reduced to obtain approval [from the judicial system] to discredit or blame the other*.<sup>981</sup> The service providers who recognize that Victims have chances to arrive at the desired resolution state that for this to happen: (i) complaints have to act as a limit for the accused to cease with the abusive behaviour;<sup>982</sup> (ii) complaints have to suffice to handle conflicts and to respond to requests of Victims;<sup>983</sup> (iii) complaints need to be complemented by counselling;<sup>984</sup> (iv)

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<sup>969</sup> Lawyer, SP 002; Professor of Philosophy, SP 011; Psychologist, SP 019; Lawyer, SP 020; Psychologist, SP 022; Psychologist, SP 009; Lawyer, SP 016; Psychologist, SP 024.

<sup>970</sup> Psychologist, SP 003; Psychologist, SP 004; Student, SP 010.

<sup>971</sup> Psychologist, SP 013.

<sup>972</sup> Lawyer, SP 017; Psychologist, SP 025.

<sup>973</sup> Lawyer, SP 020.

<sup>974</sup> Ibid.

<sup>975</sup> Psychologist, SP 024.

<sup>976</sup> Psychologist, SP 026.

<sup>977</sup> Social Worker, SP 007; Psychologist, SP 014.

<sup>978</sup> Psychologist, SP 012; Student, SP 018; Lawyer, SP 008; Psychologist, SP 021.

<sup>979</sup> Professor of Philosophy, SP 011; Psychologist, SP 022; Psychologist, SP 004; Psychologist, SP 012.

<sup>980</sup> Social Worker, SP 007; Lawyer, SP 008; Psychologist, SP 009; Psychologist, SP 026; Lawyer, SP 017; Student, SP 018; Psychologist, SP 021.

<sup>981</sup> Psychologist, SP 015; Psychologist, SP 003.

<sup>982</sup> Lawyer, SP 002; Psychologist, SP 006.

<sup>983</sup> Psychologist, SP 013; Psychologist, SP 014.

<sup>984</sup> Lawyer, SP 016; Lawyer, SP 020; Psychologist, SP 023.

complaints need to go to the “right” prosecutor and/or judge;<sup>985</sup> (v) the judicial intervention needs to be timely;<sup>986</sup> and (vi) jail sentences need to be granted in cases of severe violence, since probation does not suffice.<sup>987</sup>

#### 4.5.5. Partial Observations

Service providers agree on the importance of the multidisciplinary approach to assist Victims. There is common consent on the fact that problems experienced by Victims cannot be solved exclusively by Legal Organizations. Therefore, service providers address repeatedly the importance of the coordination with other organizations. This needs further development, however. Service providers perceive OFAVyT as assisting Victims to “overcome,” “to feel support,” and “to continue with” their complaints. This perception, which is also addressed by key civil servants and justice providers, brings attention to the value of providing people with a trustful and responsive judicial system.

The judicial system, however, cannot solve all the problems people have and even less so when those problems are as complex as domestic violence. Therefore, coordination with other organizations is highlighted as being very necessary. An extensive design to connect efforts through communication and cooperation between organizations might reduce the costs for the state and increase the service delivered to the people.

Conflict resolution seems a difficult ideal to reach for many Victims, in the eyes of service providers. The psychological aspect of conflicts, the psychological dependency of Victims, and their lack of capacity to make decisions, render the judicial system an incomplete tool for conflict resolution. It depends on Victims and in the number of open doors ready to assist them. However, service providers recognize that Victims experience a feeling of empowerment when they submit complaints. This moment might already position them differently in their conflicts, recognizing their role and their tools. Subsequent meetings provide Victims with further tools for empowerment because Victims experience a space where they exteriorize their desires and boundaries, where they receive support and attention, and where they receive information on what can be done to take a deeper approach to resolve conflicts. These options remain available for Victims even when the information is not used at that moment in time.

#### 4.6. Concluding Observations

The LE framework is applied in this chapter to three guiding actors with different functions within and/or interaction with the PPO: key civil servants, justice providers, and service providers. The following concluding remarks address the analysis in a different order, aiming to highlight the LE framework and, as done in the previous chapter, to provide a different concluding perspective. Accordingly, the four components of the LE framework are hereby presented and within each of these

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<sup>985</sup> Psychologist, SP 025.

<sup>986</sup> Psychologist, SP 023.

<sup>987</sup> Lawyer, SP 020.

components the main findings of the three groups of actors are comprehensively analysed.

#### 4.6.1. Rights Enhancement

Different legal provisions assist different guiding actors. Key civil servants appear to rely more, during their daily tasks, on procedural than on substantive legal provisions. Consequently, legal provisions that provide channels of action seem to be more relevant at the time of implementing internal policies. This result is not surprising since the role of procedural legal provisions is to offer steps to exercise substantive legal provisions. Justice providers, however, find international law and court decisions more relevant at the time of arguing before judges. International law seems to reflect better the rights of women to a life free of discrimination and violence and also is a reminder of the duties assumed by the state.

Court decisions help sustain advancements that courts have made to elucidate legal ambiguities. Service providers work with a broader spectrum of legal provisions that are relevant for Victims. The central place is given to Victims, and service providers work with all overarching legal provisions that affect Victims. For that purpose, service providers need to have an overall idea about what can be done in civil and criminal justice, together with an understanding of the internal regulations and up-to-date information on the interpretations that judges give to legal provisions that are relevant for Victims. This level of understanding seems to be possible for lawyers and psychologists. Service providers, more than key civil servants and justice providers, perceive the conflicts as multidisciplinary, viewing legal provisions as one of the many tools needed to resolve conflicts.

All providers agree that Legal Organizations to some extent assist Victims to resolve conflicts. These Legal Organizations are perceived as framing conduct and as representing what the social limits of conduct are, though this rule does not apply to every case. It is agreed that Legal Organizations influence, to some extent, the conduct of those who access them,<sup>988</sup> though it cannot be perceived the extent to which they influence the conduct of those who did not access. Nevertheless, the majority of providers agree that people who accessed and trusted Legal Organizations most probably will use them again if other conflicts occur. The access to the PPO is mostly considered as a starting point to conflict resolution. Within the multidisciplinary understanding of conflicts, further assistance is demanded by most Victims in order to put an end to their conflicts.

All providers agree that Legal Organizations have many limitations with respect to enabling conflict resolution, and that this is only possible through a multidisciplinary approach. Within those limits, improvements can be made to reduce unnecessary bureaucratic steps (e.g. reduced attention hours, limited locations of units, unnecessary calls, or formal requires). The Argentine population was consulted on what type of problems a new criminal code should address. Interestingly enough, the main request

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<sup>988</sup> Giddens, *Sociology*, 783.

was the increase and granting of more severe penalties for those who commit crimes even to the extent that the death penalty was requested to be incorporated by eleven of the 129 people who responded.<sup>989</sup> The Criminal Code Project of 2014, however, strengthens other methods of conflict resolution in which offenders return something positive to the community, being more in line with the restorative approach perceived by interviewees as more helpful for an effective conflict resolution.

All interviewees perceive that there are certain characteristics that providers need to have for a better delivery of assistance. In the eyes of key civil servants, it is essential that service providers and prosecutors have a vocation to serve and a capacity to adapt to innovative organizational designs. Justice providers view it as relevant that central organizations deliver training for all providers. Training is considered essential mostly to allow every provider to grasp and work with concepts as understood within new paradigms. Service providers primarily consider it important that justice providers are trained in new paradigms. University degrees are considered by service providers as a symbol of quality and validity of the service delivered. General training on how to work with a gender perspective and special training on different professional skills of service providers are viewed as relevant.

Victims gain relevance in the City and this can be observed by the consistent answer by all providers pointing at the paradigm shift that now starts to recognize rights of Victims (especially observed in key civil servants and justice providers). Court decisions also mark the current paradigm shift when ruling in favour of the contextual evidence, for example. Legal Organizations are currently experiencing the paradigm shift. This means there are stereotypes that are being broken, yet it is necessary to avoid the installation of new stereotypes.<sup>990</sup> Therefore, within the shift there is a need to avoid creating other harmful assumptions such as “all men are violent,” “all policemen will never take complaints from women,” “all women are victims,” and “mediation can never be performed in domestic violence cases.” Injustices can take place when making assumptions, such as those that did and still occur within the “old” stereotypes assuming that “women provoke the reaction of men” or “judges cannot decide only with the testimony of Victims without violating the right to due process of the accused.” The lesson learned by those providers who work more closely with Victims (i.e. service providers and mediators) is that ideally the assistance and decisions need to be tailor-made to parties in order to increase the chances of conflict resolution. Domestic violence is a serious multidisciplinary problem that cannot be approached by the judicial system with assumptions or stereotypes.

The physical space where services are delivered is also an important element for most interviewees. As mentioned above, the type of conflict resolution ideally should match the characteristics of the parties. The physical spaces where providers perform tasks need to respond to the type of service delivered and to the goal of each intervention. Key civil servants consider it important to design decentralized units located closer to

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<sup>989</sup> Comisión para la Elaboración del Proyecto de Ley de Reforma, *Anteproyecto Código Penal*, Decreto 678/2012:14–22.

<sup>990</sup> Genoveva Cardinali, “Violencia doméstica.”

the population, making sure that the organizations are present in every sector within the City and signs are placed outside buildings to gain visibility. Front desks in units are designed to receive people, and justice providers and service providers are located in offices behind. Judges consider the introduction of court hearings important because that space allows transparency and equality between parties. Therefore, there is a need for rooms that accommodate the parties, their lawyers, judges, and the public.

Mediators highlight the importance of having rooms that can facilitate communication. Rooms, at least, have to be fully available and quiet to facilitate communication and allow mediators to work only with the emotions of parties, and not with the additional stress of the environment. Service providers also mention the importance of the physical space to perform tasks. Similar to mediators, they indicate that rooms have to be, at least, available and quiet to facilitate a supportive environment for Victims to present their problems, and for service providers to provide advice. The physical space is considered important, though it seems as though it does not receive the necessary attention by key civil servants. The data hints at the need for rooms adapted to providers, and not *vice versa*. This is an unexplored field and more research needs to be performed in order to arrive at conclusions. However, the fact that every group of providers mentions the physical space as an element that matters to the service provided brings attention to the type of design that is required.

There is common consent on the fact that Victims living in different geographical areas of the City have different types of conflicts. Decentralized units may also be accompanied by tailor-made policies to serve the specificities of a community. This also highlights a major problem in the City, which is the lack of social inclusion and inequality, yet this topic exceeds the purpose of this study.

The e-space is mostly considered by key civil servants as a tool to improve the service of the organizations. The e-space allows for additional access points for people, a space for rights awareness, and for coordination of tasks. The e-space also allows for internal communication between members of the PPO and ideally should allow for communication with other state organizations (e.g. introduction of technical interoperability programmes<sup>991</sup>).

The judicial system is not omnipotent, it is not able to resolve all conflicts; there is a clear need, as expressed by interviewees, to perform joint activities and to cooperate with other state organizations. The cooperation is important for the judicial system to perform activities with other sectors and *vice versa* (e.g. people approaching the executive with legal problems).<sup>992</sup> However, there does not seem to be a formal network between state organizations. Few links with other state organizations are

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<sup>991</sup> Technical interoperability programmes are defined as “network infrastructure specifications, transfer mechanisms and data exchange protocols, technological aspects of accessibilities and security, interfaces,” see Henning, “Living up to Standards: Interoperability Governance and Standards Adoption in Government Information Networks,” 13.

<sup>992</sup> Maru and Moy, “Legal Empowerment and the Administrative State: A Map of the Landscape, and Three Emerging Insights.”



mentioned during interviews, and those mentioned often work in one direction (e.g. OFAVyT and OVD). People, as a result of this, might have to approach multiple state organizations to cope with one problem. For example, when seeking help on domestic violence a Victim can initiate a case with the: (i) PPO, (ii) civil court, (iii) OVD, (iv) CIMS, (v) Council for the Rights of Children and Adolescents, and (vi) Ministry of Social Development. This number of state organizations to cope with one problem shows advancement in state concerns towards domestic violence, though it also saturates public resources and people. Both sides make too many efforts that are assigned to resolve a conflict, placing sustainability at risk.

There is a need for further studies on how to improve the formal network in order to maximize resources, reinforce cooperation, and improve the delivery of assistance. Options that aim at creating units within a structure to replicate the assistance of another organization in order to provide better coordination do not seem to be an effective use of resources or to facilitate the understanding of people as to who does what. For example, training people to submit complaints at access points to overcome an inefficient police service is a policy that even when positive in the long term has a very high initial cost. On the one hand, Legal Organizations need to “replicate” a service to receive complaints. On the other hand, Legal Organizations need to promote those services in order to introduce them into the culture of the people. It would be more efficient if the police were trained to perform properly and if the links between the police and the PPO were designed to work smoothly. Examples of extending the service of OFAVyT to provide further psychological assistance or extending the legal advice, as proposed by some service providers, can also be considered as attempts to deal with a deficient cooperation amongst state organizations in the wrong way. The innovations need, therefore, to focus on the design of ways to structure cooperation amongst state organizations.

#### **4.6.2. Rights Awareness**

Rights awareness can be gathered on three levels aiming at different groups. One level relates to strategies built by key civil servants to make people aware of the existence of the PPO as a place to claim rights. Another level relates to strategies built by key civil servants and justice providers to generate awareness in other providers and colleagues of the rights that Victims have within current legal provisions. A last level relates to strategies used by key civil servants, justice providers, and service providers to increase the awareness of rights of Victims.

The physical spread of decentralized units at the PPO around the City is considered to increase the awareness of people of the existence and service provided by the PPO. Legal Organizations are not the only spaces where people encounter their rights, and extensive policies on rights awareness need to be coordinated with other organizations. Justice providers use legal means to make colleagues aware of the rights of Victims. This can be found mostly with regard to prosecutors and judges when prosecutors argue for the rights of Victims and bring to judges awareness on how those rights need to be protected.

Key civil servants consider it very costly to deliver large-scale advertisements to make people aware of their rights. This actor suggests coordination with the executive because the latter has more resources to undertake large-scale advertisements together with other organizations (e.g. capacity to incorporate preventive policies in the curriculums of schools). Key civil servants use verbal, symbolic, and literal means of communication through smaller-scale and less expensive channels (e.g. metro stations, community-radios, visits to schools and museums). Key civil servants communicate through those information channels about where to claim different rights and deliver messages that aim at strengthening the confidence in the capacity of Victims to claim for those rights (e.g. “Yes you can”). Increasing the subjective LE of Victims is important to key civil servants, justice providers, and service providers.

Domestic violence is viewed as a problem embedded in the context of society and families. All providers therefore explain the importance of the awareness of rights in those two contexts. Victims are also perceived as feeling less guilty when they know that they have a right that protects them against the abuses they receive. Rights awareness, consequently, may trigger action because rights clarify what can and cannot be accepted. Justice providers, nevertheless, express the view that being fully aware of all rights is impossible and that ignorance may bring abuses by those who know how to deal with legal provisions.

Policies to understand what type of conflicts people are facing are also implemented by key civil servants (e.g. neighbourhood meetings). These policies act as channels of participation because they may trigger the implementation of tailor-made advertisements to make a certain population aware of rights that they might not be exercising. This type of policy can gain more attention and more relevance within LE. Key civil servants also implement tailor-made rights awareness policies to approach different sectors of the population (e.g. children in secondary school and people living in emergency neighbourhoods).

Service providers perceive that the elements that contribute to the awareness of rights of those who have not accessed the judicial system are: education, social and economic resources, and the information people are able to encounter. The chances of Victims to receive and understand the information are also considered important, yet this has a direct relation with the level of education and personal distress. Those who know their rights mostly recognize their substantive rights and address them as principles (as reflected by human rights treaties). Awareness of legal principles is viewed as assisting Victims to submit complaints. A deep understanding of legal provisions is left only in the hands of a few, though for most of the everyday conflicts it seems that people with education have the capacity to absorb rights awareness. Ultimately, it is important that people are aware of the legal options that allow them to claim for their rights and for conflict resolution.

#### **4.6.3. Rights Enablement**

The legal procedure is perceived by most interviewees as a process that Victims need to endure. Therefore, organizations that can provide Victims with assistance on how

to transit through that procedure seem to be needed for rights enablement. Trust in Legal Organizations is perceived as being an important factor for Victims to consider more attentively the suggestions and information provided by justice providers and service providers. In addition, trustworthy Legal Organizations may promote participation in the procedure and improve the desire of Victims to share information about their conflicts. Key civil servants in particular consider the need to provide to the community a responsive and trustful Legal Organization to reverse social assumptions on the extent to which the judicial system can help and be trusted.

Justice providers and service providers are essential for rights enablement. They are the face of the Legal Organization to the community. Therefore, the quality of the service delivered by justice providers and service providers is important for the delivery of legal assistance and to sustain the emotional well-being of Victims. The exhaustion of those who assist Victims on a daily basis is nevertheless viewed as detrimental to providers who are continually sensitive to these problems.

Key civil servants consider it important to provide Victims with different channels to submit complaints. The Internet is viewed as the most accessible channel to everyone and as a good enabler of communication. This study cannot make any conclusion on which channels are best for Victims in the eyes of providers, however. Extended opening hours of Legal Organizations also assist in the enablement of rights because it reduces time constraints based on daily obligations. However, key civil servants and service providers note that many times Victims living in emergency neighbourhood prefer not to submit complaints in units located in their neighbourhoods because the events may become public and known to relatives, friends, and even the accused. This reduces the safety of Victims, and submitting complaints online or in centralized units is viewed as a better option for these Victims.

A restorative justice approach to conflict resolution and Victims seems to be perceived as being better to enable conflict resolution. This highlights how important it is for the judicial system to focus on actually resolving the conflicts of parties. Probation and mediation are therefore considered better means to enable conflict resolution because they better reflect the desire of the parties rather than the desire of the law. Probation gives chances to the accused to propose a solution while prosecutors have tools to propose additions and control enforcement. Mediation allows parties to discuss the roots of their conflicts, even when these differ from the conflicts that triggered the complaints, and gives parties tools to improve means of communication. There is an on-going debate about using mediation for domestic violence cases. As mentioned in the previous chapter, Law 26485 and the CCPC exclude its use for domestic violence cases. The negative approach that legal provisions give to the use of mediation is also agreed upon by some justice providers and service providers. The rest of the interviewees, and mostly mediators, do not agree with this general understanding although they all agree on the need to consider the conditions of Victims and to decide on a case-by-case basis.

Specialized prosecutor units are considered by some prosecutors as assisting rights enablement. While one group states that the work performed by the specialized

prosecutor units is the same as that performed by the other units, all prosecutors agree that having more time to investigate increases the number of cases that reach trial. Specialized prosecutor units also assist to convey in courts, for example, a different way to evaluate the evidence. Moreover, the specialization gives prosecutors the chance to learn about the dynamics of domestic violence complaints and what type of elements they need to look for in order to bring cases to trial. The specialized prosecutor units also adjust the way they assist this vulnerable group to avoid re-victimization or to avoid placing Victims in a worse situation to the one they were in before complaints were submitted.

Just the presence of a third party participating in the conflicts is perceived as increasing rights enablement. For example, judges perceive that conflicts are often resolved when they handle the hearings; and prosecutors ensure that meetings are taken by prosecutors or the second highest hierarchical officer within the prosecutor units. The time allocated to meetings and the physical settings are also considered important to enable conflict resolution. Mediators and service providers recognize that ideally the time allocated to each meeting should be determined by the needs of parties, not pre-determined by the PPO. Different meetings with Victims are meant to achieve different goals, and most providers address the importance of the physical setting to properly perform their tasks.

The courts and the presence of judges are considered to deliver authority. A quiet and stable room for mediators releases them from the uncertainty of where they will work and allows immediate focus on tasks. Moreover, a quiet place creates an appropriate environment for parties to communicate. A quiet and intimate space for meetings is considered by service providers to give them an appropriate environment for Victims to deliver their facts.<sup>993</sup> Observations at the PPO show that thought is given to the design of the offices. However, considering the multidisciplinary approach to conflicts and the introduction of alternative dispute resolution mechanisms during the preliminary investigation stage, more can be innovated in terms of physical settings adjusted to enable the results aimed for at each meeting.

The support that Victims receive during meetings is perceived as more important than the legal information to enable conflict resolution. This is because understanding legal options takes time, and some Victims persist in their complaints if they receive support. Consequently, service providers highlight the importance to work with the understanding of Victims of their self-responsibility and their capacity to handle and resolve their conflicts. Referrals are, in this sense, named as tools that enable conflict resolution. Referrals to psychologists are viewed as assisting Victims to be aware of where they are at present in their conflicts. Referrals are considered a tool that may empower Victims to continue and sustain the legal procedure and to resolve conflicts. As mentioned above, cooperation amongst different organizations is mentioned as needed to enable conflict resolution.

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<sup>993</sup> On the importance of the space to perform activities, see Giddens, *Sociology*, 792.

Lawyers are not always viewed as enabling conflict resolution. The importance depends on the type of cases and on the approach the lawyers have to conflict resolution. Those lawyers that litigate the conflicts are perceived, mostly by judges and mediators, as blocking the possibilities of peaceful and time-effective agreements.

There is a limited introduction of concrete actions that Victims can perform to enable conflict resolution, such as those proposed by the USAID framework. The approach perceived from interviews relates to elements that have been incorporated to assist Victims in their access to justice, transit through justice, and their resolution of conflicts, though not elements that allow Victims to perform autonomously (e.g. completion of forms to make requests or self-help desks).

#### **4.6.4. Rights Enforcement**

Availability of information on the Internet is one of the main policies implemented by key civil servants to improve transparency and accountability because all internal regulations are made available to the public and to justice providers and service providers. They also accelerate the communication between key civil servants and service providers, services providers and justice providers, and amongst the different guiding actors. Communication with the police is considered important for the enforcement of rights, yet coordination of conflicts between key civil servants of different jurisdictions block that communication and hence the possibilities of people to effectively enforce their rights. Customer-satisfaction surveys are available for people to assess the service received. These surveys are not perceived to serve a concrete purpose, however.

The separation of tasks amongst judges and prosecutors is perceived as more transparent. Court hearings, for example, occur publicly and in the presence of the parties involved. Before court hearings take place, judges have no opportunity to form an opinion about either the parties or the complaints, and the investigations are left solely to prosecutors.

The chances of Victims to enforce their rights might be more “real” considering the approachability, the lack of monetary cost, the extended opening hours, and the units designed to refer Victims immediately if complaints clearly do not fall under the jurisdiction of the PPO. The incorporation of alternative dispute resolution mechanisms during the preliminary investigation stage gives chances to parties to work on the type of solutions they committed to “enforce.” Prosecutors, moreover, have tools to enforce preventive measures during this stage. For that purpose, prosecutors jointly work mostly with OFAVyT, judges, and police officers. During court hearings prosecutors play an important role in ensuring that judges consider the rights of Victims as they consider the rights of the accused. More court decisions against the accused were granted after the specialized prosecutor units were incorporated. Mediation, contrary to probation, does not give prosecutors enforcement power over the signed agreements.

The will of Victims to continue or not with their cases is a very important component to the enforcement of rights. The cycle of violence and the dependency ties that

Victims build with abusers, amongst other elements, make Victims lose their capacity to make their own choices. Moreover, the favourable results sought by Victims often exceed the possibilities of the judicial system. Yet, the chances to achieve those favourable results are considered to increase with the assistance delivered by service providers.

This chapter examines how guiding actors perceive elements that contribute to access to justice and LE of Victims. Chapter 5 of this study uses the experience of Victims as the main source of data and analyses how access to justice legally empowers Victims from their viewpoint. Therefore, the unit of analysis in the next chapter changes from Legal Organizations to Victims.



## Chapter 5

### Legal Empowerment as Applied to Individuals

#### 5.1. Introduction

Victims who accessed the Public Prosecutor's Office of the City (PPO) are the individuals addressed in this study.<sup>1</sup> Victims represent an example of a vulnerable group that accessed the PPO after the submission of complaints. The previous chapters present the legal provisions that contribute to legal empowerment (LE, chapter 3) and the particularities of a Legal Organization from the view of guiding actors who assist Victims in exercising rights (chapter 4). This chapter focuses on how Victims act within the context offered by legal provisions and Legal Organizations and on how they gain LE as they access and transit through the judicial system.<sup>2</sup> The analysis in this chapter derives from the voices of Victims and entails an intrinsic complexity which derives from the attempt to understand law and human behaviour.<sup>3</sup>

The following sub-sections of this chapter apply the LE framework to the Victims who accessed the PPO (2.1.2.3. and 2.2.1.3.) during the periods of data collection. Before presenting the analysis, the study provides an overview of the characteristics of the Victims interviewed in order to provide a frame for the voices analysed in the succeeding sub-sections (5.2.). The chapter then analyses the four components of the LE framework from the perceptions of Victims (i.e. rights enhancement (5.3.), rights awareness (5.4.), rights enablement (5.5.), and rights enforcement (5.6.)). Concluding observations for the chapter provide the main findings for each component of the LE framework (5.7.).

#### 5.2. An Overview of Victims

All Victims in this study share a common element: they submitted a complaint in the City. The PPO was handling Victims' criminal complaints on threats,<sup>4</sup> harassment,<sup>5</sup> or breach of family assistance duties<sup>6</sup> at the time of first interviews. These two fall under the category of domestic violence and trigger mandatory intervention by the Victims

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<sup>1</sup> There is one male within the concept of "Victim." The male can be identified by the reference indicating the gender beside the number of the interview (i.e. V Male-Q, 028, V Male-I 1, 028, V Male-I 2, 028). The male is included in the analysis, and when he is the only Victim this is identified in the text as "he." Moreover, a note is made in the text when results can derive from the gender of interviewees.

<sup>2</sup> The questionnaire and interviews with Victims are abbreviated in footnotes using the following criteria: (i) number to identify + "V-Q" [referring to the questionnaire] + date; (ii) number to individualize + "V-I 1" [referring to the first interview] + date; (iii) number to identify + "V-I 2" [referring to the second interview] + date. (iv) number to identify + "V-IwSP" [referring to legal documents that contain quotes of Victims (e.g. complaints or reports). The date and provider are not released, to preserve anonymity].

<sup>3</sup> The analysis presented under this chapter derives from interviews conducted with Victims. Font in *italics* means that the words are the expressions of Victims in a translated version from Spanish into English. Words between "quotation marks" mean that the concept encapsulates the idea of Victims, yet is not verbatim.

<sup>4</sup> Congreso de la Nación Argentina, *Código Penal de la Nación*, art 149bis(1).

<sup>5</sup> Legislatura de la Ciudad Autónoma de Buenos Aires, *Código Contravencional de la Ciudad Autónoma de Buenos Aires*, art 52.

<sup>6</sup> Congreso de la Nación Argentina, *Ley 13944*.



and Witness Assistance Office (OFAVyT).<sup>7</sup> Victims were interviewed at the PPO and, as is indicated below, in most cases the PPO was not the only Legal Organization involved in their problems. The chapter presents an analysis on the voices of fifty-four (54) Victims who agreed to participate in this study (2.2.2.3). Most Victims state that by the time of the first interview it was also their first time at OFAVyT.<sup>8</sup> The remaining Victims had been previously contacted by OFAVyT mainly during the previous months. Only a few Victims attended OFAVyT one or two years before the day of the first interview (annex 11).

### 5.2.1. Residence and Place of Birth

In all cases the events that triggered the complaints occurred in the City. The majority of Victims interviewed reside in the City and one-fourth of them live in an emergency neighbourhood. Three Victims lived in the province of Buenos Aires at the time they submitted their complaints. One Victim was born and lives in Bariloche, province of Río Negro, and submitted a complaint in the City because the violence occurred in the hotel she was staying at during a short-term visit for medical reasons.

Most Victims were born in the City. Four Victims were born in different provinces of Argentina (Chaco, Entre Ríos, Jujuy, and Río Negro). Sixteen Victims were born outside Argentina, yet they lived in the City at the time they submitted their complaints. Four of those Victims were born in Paraguay, seven in Bolivia, two in Colombia, one in Chile, and one in Peru.



Figure 1. Map

Figure 1 shows: (i) with an arrow, the mobility of Victims who were born in a country or province outside of the City and migrated to the City; and (ii) with a red dot with a number 2 yet without arrow, the Victim who was born and lives in Río Negro.

### 5.2.2. Gender and Age

Victims are female and adults, with the exception of one Victim who is below the age of 18 and one victim who is male. The first exception is given by a Victim who was interviewed through her mother (legal guardian), and was only asked questions on limited occasions after she and her mother gave consent. The second exception is a male who was a victim of domestic violence. That interview is incorporated in this study to derive first perceptions of differences in responses amongst victims of different genders, though no general conclusions can be delivered. The sample age-range extends from 17 to 69 years of age, with a concentration of Victims from the

<sup>7</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, *Resolución FG N 16/10*.

<sup>8</sup> 75% of 49 Victims answered a question that was meant to capture whether that was their first meeting.

ages of 22 to 47.<sup>9</sup> The sample confirms findings from previous quantitative studies which revealed that people aged 18 to 40 form the group most vulnerable to experience judicial problems, because during this age period people experience the maximum exposure to relationships, such as labour, family and contracts.<sup>10</sup> Another study suggests that females in the age-range extending from 16 to 24 are at a higher risk of experiencing gender violence,<sup>11</sup> while a recent report presented by OVD states that the majority of Victims are females in the age-range extending from 30 to 39, followed by the age-range extending from 22 to 29.<sup>12</sup>

### 5.2.3. Education

Forty-eight Victims answered as to their level of education and indicated that they had some level of schooling, with one exception who did not receive any education.<sup>13</sup> Victims with secondary education are the largest group in the sample, followed by Victims with unfinished university education. The two smallest groups are composed of Victims with unfinished primary education and those with a university degree. The level of education of the sample is also in line with findings revealed in previous studies that state that less educated people have been found to be less likely to report legal problems.<sup>14</sup> Studies, however, have not been able to ensure whether this corresponds to the fact that less educated people experience fewer legal problems or whether less educated people have fewer opportunities to access to justice.

### 5.2.4. Work and Income

The majority of the forty-seven Victims who answered a question dealing with employment say that they work and earn an income ( $\geq 65\%$ ). A smaller group receives a pension or has temporary work ( $\geq 5\%$ ). Almost one-third of the sample ( $\leq 30\%$ ) does not work or earn an income, and only half of them receive at least one social benefit (i.e. *Ciudadanía Porteña*<sup>15</sup> and/or *Asignación por*

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<sup>9</sup> The sample can be divided as follows: three Victims are below 20 years of age (17-represented by her mother age 39-, 18, and 19). Thirteen Victims are in their twenties (22 two, 23 two, 24, 25, 26 two, 28 two, 29 three). Thirteen Victims are in their thirties (30 two, 31, 32 three, 36 two, 37, 38 two, and 39 two). Twelve Victims are in their forties (40, 41, 42, 43 four, 44, 45, 46, 47, 49). Five Victims are in their fifties (50, 52, 55, 57, and 59). Two Victims are in their sixties (68 and 69). Six did not answer to the question.

<sup>10</sup> Currie, "A National Survey of the Civil Justice Problems of Low-and Moderate-Income Canadians: Incidence and Patterns," 2006, 4-5, 9; Genn, *Paths to Justice: What People Do and Think about Going to Law*; Pleasence et al., "Causes of Action: Civil Law and Social Justice," 11.

<sup>11</sup> Burton, "Domestic Abuse. Literature Review," 11.

<sup>12</sup> Clarín, "Violencia de Género: Las mujeres de entre 30 y 39 Años son las más afectadas."

<sup>13</sup> The sample can be divided as follows: unfinished primary education  $\geq 6\%$ ; completed primary education  $\geq 12\%$ ; unfinished secondary education  $\geq 14\%$ ; finished secondary education  $\geq 20\%$ ; unfinished tertiary education  $\geq 10\%$ ; finished tertiary education  $\geq 10\%$ ; unfinished university education  $\geq 16\%$ ; finished university education  $\geq 8\%$ .

<sup>14</sup> Currie, "A National Survey of the Civil Justice Problems of Low-and Moderate-Income Canadians: Incidence and Patterns," 2006, 10.

<sup>15</sup> Ciudadanía Porteña is a City social benefit to acquire food, cleaning products, personal hygiene supplies, and cooking fuel, see Buenos Aires Ciudad, "Ciudadanía Porteña."

*Embarazo*<sup>16</sup>). Thirteen per cent of these Victims who work also receive the social benefit *Ciudadanía Porteña*.<sup>17</sup> This characteristic of the sample is also in line with previous studies which revealed that having personal financial resources is an important component of self-esteem and that it provides a sense of control over their lives.<sup>18</sup> Moreover, previous studies explained that there is a direct connection between having money and the positive perception of one's own capacities to solve problems.<sup>19</sup> Financial dependency is viewed by legal scholars who are experts on domestic violence as an element of power disparity used to preserve power.<sup>20</sup>

Only one-third of the forty-seven Victims who shared their income are above the minimum, vital and mobile wage;<sup>21</sup> and most Victims do not own property.<sup>22</sup> Almost half of the Victims who do not own property live on the property of a family member, and the other half rent property. One Victim lives in the house of her partner's family and another Victim lives in a welfare shelter.

Forty-one Victims answered as to the income of their household. Most Victims live in a household with an income between ARS 3,000 and ARS 7,000. Almost one-fifth live in a household with an income below ARS 3,000 (19.5%) and one-eighth live in a household with an income of ARS 7,000 or more (12%).

### 5.2.5. Household

Forty-seven Victims answered as to the number of people living in the household and the number of rooms in their dwellings.<sup>23</sup> The majority of the sample does not live in overcrowded dwelling conditions (80%).<sup>24</sup> Approximately 2 per cent of the sample live in critical overcrowded dwelling conditions while more than 17 per cent live in overcrowded dwelling conditions.<sup>25</sup> These results are in line with the statistics released

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<sup>16</sup> Asignación por Embarazo is a federal social benefit that provides a sum of money to pregnant women who are unemployed, working in the informal sector, or earning a salary below the minimum, vital and mobile wage, see ANSES, "Asignación por embarazo para protección social - Guía de trámites."

<sup>17</sup> This group has a monthly income either below ARS 1,500 or between ARS 1,500 and 3,000.

<sup>18</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 11.

<sup>19</sup> Gramatikov and Porter, "Yes, I Can: Subjective Legal Empowerment," 23–24.

<sup>20</sup> Comas de Argemir, "Violencia de género: Normativa internacional para combatirla y propuestas legales en España," 291.

<sup>21</sup> By the time of the first interviews, the minimum, vital and mobile wage in Argentina was ARS 3,300, see Consejo Nacional del Empleo, la Productividad y el Salario Mínimo, Vital y Móvil, *Resolución CNEP 4/2013*.

<sup>22</sup> 64% of Victims do not own property.

<sup>23</sup> A room is defined as any space that can be used to sleep. Therefore, kitchens, bathrooms, and balconies are excluded from the classification, see Dirección General de Estadística y Censos, Buenos Aires Ciudad, "Condición de Hacinamiento."

<sup>24</sup> A person is considered to live in overcrowded dwelling conditions when 2 or 3 people sleep in the same room. The calculation to assess the existence of a (critical) overcrowded dwelling is made by dividing the number of people living in the household by the number of rooms, see *ibid*.

<sup>25</sup> A critical overcrowded dwelling is considered when more than 3 people sleep in one room, see *ibid*.

by the City indicating that approximately 90 per cent of inhabitants in the City do not live in overcrowded dwelling conditions.<sup>26</sup>

### 5.2.6. Children

More than 80 per cent of the sample that answered as to whether or not they had children (i.e. 45 Victims) state that they have children, while more than 67 per cent of those children are below eighteen years of age. Most Victims have one or two children.<sup>27</sup> The rest have from three to nine children.<sup>28</sup>

### 5.2.7. Type of Problem

A total of forty-six Victims responded to an open-ended question about what their problems were. More than half of the Victims respond using legal vocabulary: *threats*,<sup>29</sup> *harassment*,<sup>30</sup> and *child support*.<sup>31</sup> Less than half respond in general terms, such as stating: *domestic violence*,<sup>32</sup> *family violence*,<sup>33</sup> *violence*,<sup>34</sup> *gender violence*,<sup>35</sup> *family conflicts or problems*,<sup>36</sup> *someone follows me*,<sup>37</sup> and *my husband hit me once*.<sup>38</sup> For a small group of Victims, their problem is a consequence of an external element: *the problem is because of alcohol*.<sup>39</sup> And, one Victim states the problem in terms of a desire: *I want to separate and live in peace with my children*,<sup>40</sup> while another Victim states having no problem: *none*.<sup>41</sup>

Half of the forty-eight Victims who answered as to whether or not they had another problem besides the one mentioned above said, “Yes.” The tables below show what type of problems Victims indicate having and whether they were receiving help to solve those problems.

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<sup>26</sup> Approximately 8% of the inhabitants of the City live in overcrowded dwelling conditions and 1.5% live in critical overcrowded dwelling conditions, see *ibid.*, fig. 6.17.

<sup>27</sup> The sample can be divided as follows: 27% have 1 child and ≤ 57% have 2 children.

<sup>28</sup> The sample can be divided as follows: 8% have 3 children, ≤ 3% have 5, 3% have 7, and 3% have 9 children.

<sup>29</sup> V-Q, 017; V-Q, 006; V-Q, 004; V-Q, 005; V-Q, 021; V-Q, 033; V-Q, 032; V-Q, 034; V-Q, 041; V-Q, 042; V-Q, 047; V-Q, 048; V-Q, 049; V-Q, 051; V-Q, 053.

<sup>30</sup> V-Q, 008; V-Q, 032; V-Q, 050.

<sup>31</sup> V-Q, 003; V-Q, 007.

<sup>32</sup> V-Q, 040; V-Q, 045.

<sup>33</sup> V-Q, 011; V-Q, 019.

<sup>34</sup> V-Q, 013; V-Q, 043.

<sup>35</sup> V Male-Q, 028; V-Q, 024.

<sup>36</sup> V-Q, 035; V-Q, 030.

<sup>37</sup> V-Q, 001.

<sup>38</sup> V-Q, 050.

<sup>39</sup> V-Q, 016.

<sup>40</sup> V-Q, 037.

<sup>41</sup> V-Q, 038.

Yes Other Problems	24 Victims
Housing	37.5%
Psychological	33.33%
Health	29.17%
Employment	25%
Debts and Credits	25%
General Well-being	20.83%
Family and Relations	20.83%
Others: <i>Self-esteem, son, disabled daughter, money</i>	16.67%
Fitness	8.33%
Addictions	n/s
Migration	n/s
Discrimination	n/s

Table 10. Other Problems (n/s = not selected)

Most Victims (58.33%) who have “other problems” recognize having multiple additional problems to the one that motivates their complaints. Within the multiple additional problems, the majority of Victims have a combination of economic problems (e.g. employment, debts and credits, and housing) and physical, psychological, and/or social problems (e.g. general well-being, family and relations, psychological, and health). Three-quarters of the Victims who have “other problems” are receiving help to solve those additional problems. Psychologists, the CIM, secondary schools, hospitals, pharmacies, meditation techniques and family and friends are providers of help to Victims to solve physical, psychological, and/or social problems. Job training courses offered by the Ministry of Social Development,<sup>42</sup> pensions, and searching for employment or increasing hours of work are mentioned as providers of help to solve economic problems.

### 5.2.8. Solution Sought

Forty-eight of the Victims answered the question about what type of solutions they seek to their problems: 54.17 per cent opted for multiple options while 45.83 per cent chose only one. Therefore, most Victims seek a multidisciplinary solution to their problems. Victims select multidisciplinary solutions that imply communicating with the other parties and that demand a compromise of a behavioural change from the other parties.

Twenty-four Victims opted only for one option as a solution to their problems. Few of them selected legal options (i.e. “a court sentence,” “separation or divorce,” and *child support*).<sup>43</sup> The remaining opted for general options (i.e. “to not be bothered any

Receiving Help for Other Problems	
Yes	12
No	8
For some yes, for some no	2
No reply	2

Table 11. Receiving Help

<sup>42</sup> Buenos Aires Ciudad, “Fit Joven.”

<sup>43</sup> V-Q, 003; V-Q, 007; V-Q, 022.

longer,”<sup>44</sup> “to have the other party understand how they feel,”<sup>45</sup> and *to trigger a change in the behaviour of the other party*<sup>46</sup>). Most Victims generally seek the solution that the other party does not bother them any longer. The second most selected options were to have the other party understand how they feel, to leave a record of what happened,<sup>47</sup> and to have a conversation with the other party.<sup>48</sup> A small number of Victims want to separate, divorce, or receive child support, and most of those Victims also want: not to be bothered any longer, the chance to have the other party know how they feel, and to leave a record of what happened.<sup>49</sup> Few Victims chose as an option to receive an apology<sup>50</sup> and to have the other party receive a sentence by a court.<sup>51</sup> Both of these two options were selected in combination with having the other party understand how they feel about the situation. Some Victims, therefore, seek a chance to communicate to the other party how they feel, but with the assistance of a third party. They also expect the external assistance to be a means to be left in peace.

### 5.2.9. Trust in a Solution

Most Victims think that it is either “likely” or “very likely” that they will find a solution to the problems that motivated their complaints ( $\leq 80\%$ ). A group of Victims states that it is either “not likely at all”<sup>52</sup> or “not likely.”<sup>53</sup> Victims in that group, with the exception of one,<sup>54</sup> state that it is their first visit to OFAVyT. Therefore, the negativity seems not to be related to previous experiences with the PPO.

### 5.2.10. Trust in their Own Capacity to Act

Victims were asked about the extent to which they trust in their capacity to fulfil different tasks to solve their problems. As can be perceived from the table below, Victims tend to answer in the extremes (0 or 10), and mostly in the positive. This can be in response to the type of problems Victims face, making them believe that they can either perform or not perform certain acts. The other possibility is that Victims feel more confident in answering with a 0 or 10, instead of using numbers in the scale.

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<sup>44</sup> V-Q, 001; V-Q, 017; V-Q, 019; V-Q, 021; V-Q, 025; V-Q, 032; V-Q, 036; V-Q, 040; V-Q, 041; V-Q, 045; V-Q, 052.

<sup>45</sup> V-Q, 014; V-Q, 015; V-Q, 024; V-Q, 030.

<sup>46</sup> V-Q, 027; V-Q, 051; V-Q, 054.

<sup>47</sup> V-Q, 002; V-Q, 004; V-Q, 005; V-Q, 008; V-Q, 010; V-Q, 011; V-Q, 012; V-Q, 013; V-Q, 014; V-Q, 015; V-Q, 016; V-Q, 024; V-Q, 029; V-Q, 030; V-Q, 033; V-Q, 034; V-Q, 035; V-Q, 038; V-Q, 043; V-Q, 044; V-Q, 047; V-Q, 049; V-Q, 050; V-Q, 053.

<sup>48</sup> V-Q, 004; V-Q, 005; V-Q, 006; V-Q, 008; V-Q, 034; V-Q, 043; V-Q, 044.

<sup>49</sup> V-Q, 007; V-Q, 009; V-Q, 016; V-Q, 026; V-Q, 037; V-Q, 049.

<sup>50</sup> V-Q, 004; V-Q, 029; V-Q, 043; V-Q, 044.

<sup>51</sup> V-Q, 003; V-Q, 013; V Male-Q, 028; V-Q, 044; V-Q, 048.

<sup>52</sup> V-Q, 022; V-Q, 048.

<sup>53</sup> V-Q, 001; V-Q, 004; V-Q, 005; V-Q, 019; V-Q, 024; V-Q, 049.

<sup>54</sup> V-Q, 001.

Respondents: 46

	0 <sup>55</sup>	1	2	3	4	5	6	7	8	9	10 <sup>56</sup>	No Answer
a. Obtain legal information (%)	2.17	n/s	n/s	2.17	4.35	8.70	4.35	6.52	19.57	8.70	39.13	2.17
b. Obtain evidence (%)	32.61	n/s	2.17	n/s	2.17	10.87	2.17	15.22	13.04	4.35	19.57	6.52
c. Speak with the accused (%)	32.61	n/s	4.35	n/s	6.52	10.87	2.17	4.35	4.35	2.17	21.74	10.87
d. Help to solve problem (%)	10.87	n/s	4.35	2.17	2.17	10.87	6.52	4.35	13.04	6.52	34.78	6.52
e. Help to make a decision (%)	13.04	n/s	n/s	4.35	n/s	2.17	6.52	4.35	15.22	8.70	34.78	6.52
f. Find a safe place to stay (%)	21.74	2.17	2.17	2.17	2.17	4.35	n/s	2.17	6.52	2.17	34.78	15.22
g. Continue with legal case (%)	10.87	2.17	n/s	2.17	4.35	13.04	2.17	6.52	10.87	4.35	30.43	10.87
h. Find a lawyer (%)	2.17	n/s	2.17	2.17	4.35	6.52	2.17	8.70	10.87	2.17	36.96	13.04
i. Find a psychologist (%)	6.52	n/s	n/s	n/s	n/s	13.04	6.52	6.52	10.87	n/s	43.48	10.87

Table 12. Trust in Own Capacity to Perform Acts (n/s=not selected)

Most Victims trust in their own capacity to obtain legal information and to find a lawyer, and in their own capacity to find a psychologist. Therefore, Victims seem to be confident in obtaining legal and psychological help. Moreover, the majority of Victims trust in their capacity to continue with their legal proceedings. Most Victims also perceive themselves as highly able to find help to solve their problems and help to make a decision. The gathering of evidence and the possibility to speak with the accused is, however, perceived as a challenge for Victims. This is not surprising since, as also mentioned by justice providers in the previous chapter, domestic violence cases demand a new approach to the evidence since they do not count on the expected type of evidence needed to sustain complaints. It is also not surprising that Victims trust less in their capacity to speak with the accused because, most probably, by the time of the complaint their capacity to freely communicate with the other party is almost gone. The capacity to find a safe place to stay is very high at both extremes. Therefore, this result expresses that some Victims do not trust at all in their capacity to find a safe place to stay, while others definitely trust in their capacities.

### 5.3. Rights Enhancement

This sub-section on rights enhancement analyses the individual developments of Victims when they obtain access to justice to solve their problems and the capacity they gain to participate in the policy process. The individual developments of Victims are captured by comparing performance before submitting a complaint, at the moment of submitting a complaint, and afterwards. This sub-section starts by analysing what Victims want (5.3.1.) and what motivates their acts (5.3.2.). Later, it analyses the objectives Victims pursue with the complaints (5.3.3.), their expectations (5.3.4.), and how they perceive their role in the search for a solution to their problems

<sup>55</sup> 0 = Definitely I cannot do that.

<sup>56</sup> 10 = I can definitely do that.

(5.3.5). Lastly, this sub-section analyses the development of individual strategies by Victims to overcome their problems (5.3.6.) and the extent to which they participate in the policy process (5.3.7.).

### 5.3.1. What Victims Want

Thirty-one Victims, as mentioned before, answered second interviews. Twenty-four of those answered a question meant to stimulate first thoughts on what they want.<sup>57</sup> This question was asked at the end of the interview and in a faster manner in order to obtain first, spontaneous answers. This section clearly reflects that even when problems may be complex, the desires, tools, and fears of Victims remain simple.

#### 5.3.1.1. “What I want is ...”



Figure 2. What I Want is ...

Many things have changed in the history of humanity, yet not the desire for a happy and tranquil life. *Happiness*<sup>58</sup> and *tranquillity*<sup>59</sup> are the two desires that the majority of Victims have in common. One group refers to desires in their personal lives; in the words of Victims: [seeing my] *problem coming to an end*,<sup>60</sup> *to continue well*,<sup>61</sup> *to continue with the case*,<sup>62</sup> *to be free and have more friends*,<sup>63</sup> *to go to Europe*.<sup>64</sup> While another group desires external changes either as a behavioural change by the accused (in the words of Victims: *that he complies*,<sup>65</sup> *that he continues complying*,<sup>66</sup> *that he stops drinking*,<sup>67</sup> *that she*

<sup>57</sup> This sub-division was inspired by the main ideas of Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice,” 33.

<sup>58</sup> V-I 2, 012; V-I 2, 026; V-I 2, 027; V-I 2, 039; V-I 2, 043; V-I 2, 045; V-I 2, 051.

<sup>59</sup> V-I 2, 006; V-I 2, 007; V-I 2, 026; V-I 2, 050; V-I 2, 053; V-I 2, 041; V Male-I 2, 028 (expressed as “peace”); V-I 2, 033 (expressed as “harmony”).

<sup>60</sup> V-I 2, 031; V-I 2, 019.

<sup>61</sup> V-I 2, 024.

<sup>62</sup> V-I 2, 052.

<sup>63</sup> V-I 2, 037.

<sup>64</sup> V-I 2, 053.

<sup>65</sup> V-I 2, 031.

<sup>66</sup> V-I 2, 003.

<sup>67</sup> V-I 2, 014.



recovers,<sup>68</sup> that he stops threatening me<sup>69</sup>) or as actions performed by Legal Organizations (in the words of Victims: *that they do something*<sup>70</sup>).

#### 5.3.1.2. “What I have is ...”



Figure 3. What I Have is ...

Most Victims understand what they have in terms of bonds of affection, while others understand what they have in terms of feelings. For the first group, the loved ones appear as a source of support,<sup>71</sup> and one Victim expresses having herself.<sup>72</sup> For the second group, most Victims express having positive feelings, such as *desire to continue like this, feeling good without problems*;<sup>73</sup> *hope*;<sup>74</sup> *busy with things*;<sup>75</sup> *safe because I have many tools, mechanisms, and actions to take and I know much more than before if anything else happens*;<sup>76</sup> *a lot of willingness to continue further and the hope that things change for good*.<sup>77</sup> The Victims who express negative feelings mention: *fear*;<sup>78</sup> *sadness*;<sup>79</sup> *self-anger*;<sup>80</sup> *future uncertainty*;<sup>81</sup> *instability*;<sup>82</sup> and *a problem*.<sup>83</sup>

<sup>68</sup> V-I 2, 038.

<sup>69</sup> V-I 2, 034.

70 V-I 2, 001.

<sup>71</sup> V-I 2, 007; and V-I 2, 045 (“my family”); V-I 2, 041 (“my daughter”); V-I 2, 026 (“the love and affection of the people who love me, primarily my daughters”); V-I 2, 027 (“I do not know, I know I have my family, my son, and I want us to be ok”); V-I 2, 039 (“God and my daughters, tranquillity and peace”); V-I 2, 043 (“I have everything I want, everything, I have a good job, I have my son, my partner, I have everything”); V-I 2, 052 (“unconditional love of my child”); V-I 2, 038 (“my nephew, I am his only family, and I believe he is alone, because his father is not here, the only person who cares for him is me”).

<sup>72</sup> V-I 2, 051.

<sup>73</sup> V-I 1, 024.

74 V-I 2, 031.

<sup>75</sup> V-I 2, 033.

<sup>76</sup> V-I 2, 034.

<sup>77</sup> V-I 2, 053.

<sup>78</sup> V-I 2, 001.

79 V-I 2, 012.

<sup>80</sup> A Victim expresses, “I have a little bit, but ok, with time I will overcome, I have anger, because I knew deep in me that I was with a person that was not healthy, and I stretched the relation, I do not know if I could have avoided this, but sometimes I get angry, these are things that I talk with my therapist, why you stay with someone that makes you bad, no? and now yes, I have a feeling of anger,” V-I 2, 050.

<sup>81</sup> A Victim expresses, “At this moment I feel uncertainty because I do not know how this will end, how things are going to be, how this is going to continue, and therefore I feel with an uncertainty because I do not yet know where am I standing in this case, in this situation,” V-I 2, 006.

<sup>82</sup> V-I 1,019.

<sup>83</sup> V Male-I 2, 028.

A small group of Victims associates “having” with securing something concrete (i.e. employment),<sup>84</sup> yet none expresses a desire to have something material (e.g. house, car). Two other Victims ignore what they have (*I do not know*<sup>85</sup>).

### 5.3.1.3. “What I fear is ...”

Fear is present in Victims, except for one who expresses not having fear.<sup>86</sup> These fears are associated with unwanted incidents related either to the abuse or to subsequent events affecting Victims and their children. Victims who associate the unwanted incidents with the abuse are fearful of suffering future abusive events or of the persistency of the problems and the need to re-start the legal procedures. In the words of Victims,

- *I fear that this happens again*<sup>87</sup>
- *I fear that he hits me*<sup>88</sup>
- *I fear that he re-appears by the time I have kids*<sup>89</sup>
- *I fear that the problem stays unresolved*<sup>90</sup>
- *I fear that something serious happens*<sup>91</sup>
- *I fear to lose*<sup>92</sup>
- *I fear that nothing changes*<sup>93</sup>
- *I fear uncertainties of life*<sup>94</sup>
- *I fear my capacity to place limits*<sup>95</sup>
- *I fear not being with my child as I should*<sup>96</sup>
- *I fear that one day he goes back to the same [addiction], because the children suffer*<sup>97</sup>
- *I fear that this continues and that it never ends, that my son gets harmed more than what we already know that this is affecting him*<sup>98</sup>
- *I fear that he does something to the child, at any moment*<sup>99</sup>
- *I fear that he does not comply with the child support and that I have to submit a complaint again, and this entire stuff again*<sup>100</sup>
- *I fear that I repeat the history, that nobody will come and raise his hand to me because I will not allow it for myself*<sup>101</sup>
- *I fear that something happens to me, that he does something, I do not know, sometimes I fear*<sup>102</sup>

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<sup>84</sup> V-I 2, 037; V-I 2, 043.

<sup>85</sup> V-I 2, 003; V-I 2, 014.

<sup>86</sup> V-I 2, 033.

<sup>87</sup> V-I 1, 024; V-I 2, 053.

<sup>88</sup> V-I 2, 012.

<sup>89</sup> V-I 2, 001.

<sup>90</sup> V-I 2, 006.

<sup>91</sup> V-I 2, 027.

<sup>92</sup> V Male-I 2, 028.

<sup>93</sup> V-I 2, 031.

<sup>94</sup> V-I 2, 052; V-I 2, 041.

<sup>95</sup> V-I 2, 051.

<sup>96</sup> V-I 1, 019.

<sup>97</sup> V-I 2, 038.

<sup>98</sup> V-I 2, 045.

<sup>99</sup> V-I 2, 034.

<sup>100</sup> V-I 2, 003.

<sup>101</sup> V-I 2, 026.

<sup>102</sup> V-I 2, 050.

A smaller group of Victims fears events related to general life occurrences and unrelated to the abusive experience. These Victims fear *Alzheimer's*,<sup>103</sup> *death*,<sup>104</sup> *loneliness*,<sup>105</sup> *stress*,<sup>106</sup> and unemployment.<sup>107</sup>

#### 5.3.1.4. “What I am Capable of Doing is ...”



Figure 4. What I am Capable of Doing is ...

*Everything* is the word one hears the most when Victims were asked to complete the sentence “What I am capable of doing is ... .” Yet *everything* is restricted by the law since the majority of Victims clarify that they are capable of doing everything within the possibilities given by law.<sup>108</sup> Victims who have children add to *everything* the condition that the performed actions have to be for the well-being of their children (e.g. *whatever is reachable to me to defend my child, I am capable of anything*)<sup>109</sup>. Some Victims

103 V-I 2, 014.

104 V-I 2, 007.

105 V-I 2.043.

106 V-I 2.039.

<sup>107</sup> V-I 2, 037.

108 In the words of Victims, “I feel capable of continuing with this and that it gets solved, but through legal means, and not by any crazy thing, because many people tell me ‘break his car,’ ‘chase him,’ ‘throw a stone at him,’ and I say ‘No,’ when you ask ‘what you are capable of’ some people will tell you ‘I am capable of killing him if I cross him again’ but no, not me, I think I am capable of continuing with this, using the resources I started to use, the legal resources, and follow it [i.e. the legal procedure] until he understands,” V-I 2, 050; “Bring him again before justice to make him comply again if he does not comply,” V-I 2, 003; “Submit a complaint,” V-I 2, 012; “What is required! What is required to be better. What is required in relation to being sent to one place or the other, always to improve. I would like to improve,” V-I 2, 006; “To submit another complaint against him in the event that he appears again, and the same if something similar happens to me, if this happens to someone close to me, help this person to do the same that I did so that the damage is not that serious,” V-I 2, 053.

109 In the voice of other Victims, “Whatever is reachable to me to defend my child, I am capable of anything,” V-I 2, 019; “If I have any problem, to defend my child with anything,” V-I 2, 027; “Everything, everything in order to defend myself and my child. Everything that is within the legal frame,” V-I 2, 034; “It is very specific. Capable of doing in relation to defending my child and all related things, everything, everything, I mean everything that is legal, and if I cannot get a legal agreement and have everything normal with him, I will have to leave the country and leave all these years here, because I have to give my child a better life, really I have,” V-I 2, 031; “Honestly, I am capable of everything, because since the PPO told me that the kids were at risk, that I knew that his mother was not present, I said ‘This Saturday I will follow her, to get involved, I will give my life,’ I said, ‘Luckily things turn out fine’”, V-I 2, 038; “Many things for the tranquillity of my daughters, their happiness,” V-I 2, 039.

who exhausted the legal options without arriving at a desired solution are puzzled as to what options are left to them. As mentioned by an interviewee:

*I do not know, I do not know because I have done what was supposedly reachable to me. Unfortunately, there is nothing left that I can do. I do not have any other legal option. My loved ones—ex-boyfriend, father—will say ‘I will kill him’ and then I will be in trouble and they will be harmed.*<sup>110</sup>

Other Victims do not contemplate the law in their statements, yet they express themselves in terms of what they are able to do,

- *performing*<sup>111</sup>
- *fighting*<sup>112</sup>
- *communication and respect, coexistence*<sup>113</sup>
- *everything to improve myself every day*<sup>114</sup>
- *everything, to be happy, everything*<sup>115</sup>
- *everything to avoid problems*<sup>116</sup>
- *everything. I am capable of doing everything and at the same time to do nothing. I do not know, it depends on me, no, everything: work, study, have projects, everything that means desire of doing, I am capable of.*<sup>117</sup>
- *move the sky to have what I want*<sup>118</sup>

Fear is mentioned as a feeling that blocks the performance of capabilities (*everything, but in other moments one gets paralyzed, because fear paralyzes*<sup>119</sup>). A smaller group mentions concrete actions unrelated to their problems (*many things, another birth, having kids again*;<sup>120</sup> *I do not know, I like painting. That I love, but I do not have much time because I get much dispersed and time is not enough*;<sup>121</sup> *study*<sup>122</sup>).

### 5.3.1.5. A Note on How Victims Present their Argument

Interviews reflect that some Victims intend to show that they are also in control of the behaviour of the accused (e.g. *From now onwards I will place him many limits*;<sup>123</sup> or *And he asked me “Why did you do that?” and I told him “You hit me, and well, that is why I did that*).<sup>124</sup> Surprisingly enough, these Victims are the ones who want to file away complaints and give the accused another chance. This study cannot assess the meaning of these expressions but, in terms of policy design, it has to be considered that in domestic violence cases verbal expressions by Victims have to be understood within the complex dynamic of domestic violence.

<sup>110</sup> V-I 2, 001.

<sup>111</sup> V-I 2, 033.

<sup>112</sup> V-I 2, 052.

<sup>113</sup> V-I 2, 026.

<sup>114</sup> V-I 2, 045.

<sup>115</sup> V-I 2, 043.

<sup>116</sup> V-I 1, 024.

<sup>117</sup> V-I 2, 051.

<sup>118</sup> V-I 2, 041.

<sup>119</sup> V Male-I 2, 028.

<sup>120</sup> V-I 2, 007.

<sup>121</sup> V-I 2, 014.

<sup>122</sup> V-I 2, 037.

<sup>123</sup> 013 V-I 1

<sup>124</sup> V-I 1, 016; V-I 1, 013.

### 5.3.2. Motivations to Act

Victims are asked, during meetings and interviews, what elements motivate them to approach the access points to submit complaints. The categories below derive from the analysis of those answers.

#### 5.3.2.1. *Last Drop that Made the Glass Overflow*

During meetings, service providers asked Victims, amongst other questions, “What brought you here?” and “What motivates this complaint?” Furthermore, during interviews, Victims were asked, more in-depth by the Researcher, what motivated them to start considering and then deciding to submit complaints. Many Victims state that an act performed by the accused motivated the submission of complaints. This act is considered as the “last drop that made the glass overflow.” This group of Victims experienced violence, either verbal or physical, for some time (between two and nineteen years). Only with time and with the accumulation of facts did they decide to ask for external help. In their words, *Up to here! I am tired!*<sup>125</sup> or *I guess I got tired, I do not know.*<sup>126</sup>

Some Victims consider the repetition of actions in time and the arrival at a point of saturation as the factors that triggered their decision to submit complaints.<sup>127</sup> For other Victims the point of saturation to decide to submit complaints is signalled by concrete acts performed by the accused that increased their feeling of risk of being harmed,<sup>128</sup> or after the accused verbalized the harassments in public and exteriorized the abuses to the closer social networks.<sup>129</sup> Violence performed in public by the accused, using for example Facebook,<sup>130</sup> has two effects on Victims: (i) the confirmation of the existence of those threats and the perception of the materialization,<sup>131</sup> and (ii) the chance to seek help from those who witness the events.<sup>132</sup>

Some Victims arrive at a point of saturation and start developing a decision to submit complaints.<sup>133</sup> In this process of developing decisions, the support received by loved ones and/or professionals, the experiences of other Victims in the neighbourhood, and the stories that appear on TV<sup>134</sup> contribute to materialize decisions.<sup>135</sup>

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<sup>125</sup> V-I 1, 009.

<sup>126</sup> V-I 1, 011.

<sup>127</sup> V-I 1, 004; V-I 1, 006; V-I 1, 009; V-I 1, 011; V-I 1, 030; V-IwSP, 031; V-IwSP, 034; V-IwSP, 046; V-IwSP, 049; V-I 2, 049; V-I 1, 050; V-IwSP, 051; V-I 2, 012; V-I 1, 015; V-I 1, 016; V-I 1, 017; V-I 1, 019.

<sup>128</sup> V-I 1, 008; V-IwSP, 029; V-I 1, 006.

<sup>129</sup> V-I 1, 048; V Male-I 1, 028; V-I 1, 030; V-I 1, 032.

<sup>130</sup> V Male-I 1, 028; V-I 1, 030; V-IwSP, 030; V-I 1, 032.

<sup>131</sup> V Male-I 1, 028; V-I 1, 030; V-IwSP, 030; V-I 1, 032.

<sup>132</sup> V-I 2, 049.

<sup>133</sup> V-I 1, 009; V-I 1, 021; V-I 1, 018; V-I 1, 023; V-I 2, 003; V-I 2, 006.

<sup>134</sup> V-I 1, 013

<sup>135</sup> V-I 1, 009; V-I 1, 021; V-I 1, 018; V-I 1, 023; V-I 2, 003; V-I 2, 006.

Sometimes they “push”<sup>136</sup> and sometimes they convince Victims to act.<sup>137</sup> As one Victim expresses it:

*I heard from many people [about submitting domestic violence complaints]. I live in a villa [i.e. emergency neighbourhood], and in a villa many people go through this; ladies and friends. And also many stories appear on TV, and all of that. And I said [to myself] ‘He will not change if I do not ... put a complaint against him.’<sup>138</sup>*

Some Victims seem to go through an empowering process before arriving at the point of saturation. A Victim expresses suffering the violence and submitting the first complaint (together with the request for divorce) after nineteen years of violence and after she was able to attain a university degree, find secured employment, and secure the fact that her child became less dependent on her.<sup>139</sup> Another Victim expresses that she waited more than three years to submit the complaint because she was trying to avoid going to the police station and the PPO. She expresses that, [by doing so] *You stay on bad terms with the other person.*<sup>140</sup> A different Victim expresses that one of the factors that motivated the submission of her complaint was realizing, after perceiving a first payment, that she could secure money for her family.<sup>141</sup>

### 5.3.2.2. Well-being of Children

Almost every Victim with children, either from the relationship or from outside of it, mentions children as an element that motivates their decision either to submit or continue with complaints.<sup>142</sup> There is only one Victim who says that the children have nothing to do with her decision because the complaint has absolutely no consequences on the accused.<sup>143</sup> A smaller group does not place the children in their arguments, though they do not deny it either, and most members of that group highlight the fact that they got tired of the situation.<sup>144</sup>

Children are viewed by these Victims as being more vulnerable to the harms inflicted by the accused<sup>145</sup> (e.g. *I do not care about me, what else can he do to me? But: what about the*

<sup>136</sup> A Victim expresses having been pushed by her father to submit the complaint, V-I 1, 023.

<sup>137</sup> Two Victims express having been persuaded by their psychological therapy, V-I 1, 030; and, V-I 1, 050; another Victim expresses having been persuaded by her lawyer, V-I 1, 003; and a different Victim expressed having been persuaded by her 12-year-old granddaughter, V-I 2, 006.

<sup>138</sup> V-I 1, 013

<sup>139</sup> A Victim explains that when she decided to submit the complaint her son was 12 years old and could take self-care if the complaint triggered any further harm, V-I 1, 008.

<sup>140</sup> V-I 1, 015.

<sup>141</sup> V-I 2, 049.

<sup>142</sup> V-I 1, 006; 013 V-I 1; V-I 1, 033; V-I 1, 016; V-I 1, 015; V-I 2, 049; V-I 1, 046; V-I 2, 034; V-IwSP, 021; V-I 1, 021; V-I 2, 026; V-IwSP, 044; V-IwSP, 008; V-I 1, 008; V-IwSP, 052; V-I 1, 017; V-IwSP, 004; V-I 1, 019; V-I 2, 031; V-I 1, 022; V-I 1, 023; V-I 1, 031; V Male-I 1, 028; V-IwSP, 030; V-I 1, 007; V-I 1, 048; V-I 2, 052.

<sup>143</sup> V-I 2, 043.

<sup>144</sup> V-I 1, 009; V-I 1, 001; V-I 1, 009; V-I 1, 054; V-I 2, 012; V-I 1, 005; V-IwSP, 047; V-I 1, 054.

<sup>145</sup> V-I 1, 004.

*child?*<sup>146</sup>). Children become, in these cases, the centre of the preoccupation of Victims and a source that triggers action.<sup>147</sup> Some Victims express that they submitted complaints after perceiving: (i) the concrete risk of physical harm for their children<sup>148</sup> (or close family members<sup>149</sup>), (ii) the development of a pathology in their children associated with the violent environment,<sup>150</sup> (iii) the lack of communication with the accused on the type of parenthood they want to provide to their children,<sup>151</sup> (iv) the awareness of the fact that the children are receiving a negative role model,<sup>152</sup> (v) the perception of a real risk that the verbalized threat could be materialized and that the children would be left without good care<sup>153</sup> (e.g. *Let us put the example that he kills me, who is going to take care of my children?* [after the accused threatens by saying, “I will kill you”]<sup>154</sup>), and (vi) the concrete threat that the accused will take children away.<sup>155</sup>

Most of the above-mentioned Victims also place themselves after their children. One of the Victims includes her need to protect the house where they live rather than including herself.<sup>156</sup> Another Victim, who submitted the complaint as a legal guardian of her 17-year-old daughter, expresses that her motivation was to represent the interests of her daughter.<sup>157</sup> The Victim had submitted, by the time of the second interview, another complaint for new threats by the accused against her daughter.<sup>158</sup> The daughter, who has a child with the accused, expressed that her child gave her the strength to continue with the complaint.<sup>159</sup> Here, the motivation to act was triggered by the need to protect the daughter against the accused even when the mother expresses following the “directions” of her daughter.<sup>160</sup> There is another Victim, who was pregnant at the time of the first interview, and expresses that the pregnancy made her feel a closer relationship with herself and a better capacity to discern between what makes her feel good and what makes her feel bad.<sup>161</sup>

Children are sometimes mentioned as the motive to endure an abusive relationship, however. A Victim, for example, continues living with the accused even after her younger daughter was born disabled, possibly, as predicted by doctors, due to the physical abuse received while being pregnant. That Victim expresses that the children love being with the father.<sup>162</sup> Another Victim expresses giving the accused “a second

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<sup>146</sup> V-I 1, 044; V-I 2, 049.

<sup>147</sup> V-I 1, 004; V-I 1, 019; V-I 1, 021; V-I 1, 025; V-IwSP, 044; V-IwSP, 046; V-I 2, 026.

<sup>148</sup> V-I 1, 017; V-I 1, 023; V-IwSP, 038; V-IwSP, 011; V-I 1, 038 (in the case, her niece).

<sup>149</sup> A Victim explains that she submitted the complaint after seeing how the health of her father deteriorated after he became aware of the threats she was receiving, V-I 1, 037.

<sup>150</sup> V-I 1, 008; V-I 1, 033; V-I 2, 031.

<sup>151</sup> V-IwSP, 031.

<sup>152</sup> V-I 1, 015; V-I 1, 016; V-I 1, 021; V-IwSP, 049; V-I 2, 049.

<sup>153</sup> V-I 1, 048; V-I 1, 021; V-I 1, 022.

<sup>154</sup> V-I 1, 021.

<sup>155</sup> V-I 1, 022.

<sup>156</sup> V-I 1, 023.

<sup>157</sup> V-IwSP, 043.

<sup>158</sup> V-IwSP, 052; V-I 2, 052.

<sup>159</sup> V-I 2, 052.

<sup>160</sup> V-IwSP, 043; V-I 2, 043.

<sup>161</sup> V-I 1, 051.

<sup>162</sup> The Victim repeats the perceptions of her doctor, V-IwSP, 012.

chance” due to their children, and expresses: *If it would not have been for the kids, I might not have returned* [to the accused].<sup>163</sup>

#### 5.3.2.3. *Last Resort*

Some Victims find complaints the last resort after unsuccessfully trying private verbal agreements.<sup>164</sup> This group, with the exception of one Victim who had legal representation, submitted their complaints without contemplating whether the complaints had civil or criminal connotations. They only learned about this once they started to comply with procedural requirements.

#### 5.3.2.4. *Limit*

A number of Victims state that they submitted complaints as a way to show the accused that, by seeking external assistance, they can also react to the violence and place a limit.<sup>165</sup> That limitation is a manifestation of power towards the accused.

#### 5.3.2.5. *Type of Abuse*

The type of abuse that Victims can report appears as another element that motivates the decision to submit complaints. A Victim expresses that even when she suffered physical violence, she only submitted a complaint when she could claim harassment.<sup>166</sup> She explains that it was easier to submit a complaint on harassment than on physical violence because exteriorizing the physical violence would have increased her feeling of shame.

#### 5.3.2.6. *Trust in the Judicial System*

Only one Victim mentions that her motivation for submitting the complaint was based on her trust in the judicial system.<sup>167</sup> This Victim mentions that her belief in the judicial system and in *justice* motivated her decision to act. The legal provisions, the Legal Organizations, or the protection of rights are hardly ever mentioned as sources that motivate the decisions of Victims to submit complaints.

### 5.3.3. Objectives

Victims are asked by providers what their objectives are with the submission of complaints. This question is asked by providers either at the PPO, the police station, or at the Domestic Violence Office (OVD).<sup>168</sup> Most Victims express their objectives in terms of what the accused or the Legal Organizations have to do. A smaller number

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<sup>163</sup> V-I 2, 037.

<sup>164</sup> V-I 1, 003.

<sup>165</sup> V-I 1, 005; V-IwSP, 013; V-I 1, 013; V-I 1, 033; V-IwSP, 036; V-IwSP, 054.

<sup>166</sup> V-I 1, 050.

<sup>167</sup> V-I 2, 006.

<sup>168</sup> The questions asked to Victims by providers from different Legal Organizations to know their objectives are: What do you want with this case? What intentions do you have with this case? What do you want to obtain with this submission? What is your objective with this case?



of Victims expresses their objectives as something that they have to do, and only a few express them in terms of what they do not want to see happening.

### 5.3.3.1. *He Has to Do*

From the group of Victims who express their objectives in terms of what “he” has to do, the materialization of their objectives relies on the delivery of actions by the accused. These actions are related, in order of relevance, to: (i) his leaving the house or staying within a distance from the Victim and children, and his stopping the unwanted behaviour (e.g. stalking or abusing);<sup>169</sup> (ii) his providing child support, and in most cases Victims keeping full custody;<sup>170</sup> (iii) his starting psychological therapy;<sup>171</sup> and (iv) his recognizing having done something wrong.<sup>172</sup>

### 5.3.3.2. *Judicial System Has to Do*

For one group of Victims, their objectives are best expressed in terms of the measures that the judicial system could take to force certain behaviour on the accused. Measures to, for example, make the accused: (i) cease with the abusive behaviour (e.g. *that he is kept away from me*<sup>173</sup>), (ii) assume paternal responsibilities (e.g. *I am without a job and need child support and custody of the kids*<sup>174</sup>), (iii) start psychological therapy (e.g. *that he is forced*

<sup>169</sup> V-IwSP, 002; V-IwSP, 008; V-IwSP, 011; V-IwSP, 016; V-IwSP, 006; V-IwSP, 022; V-IwSP, 023; V-IwSP, 027; V-IwSP, 030; V-IwSP, 034; V-IwSP, 049; V-IwSP, 052; V-IwSP, 053; V-IwSP, 013; V-IwSP, 015; V-IwSP, 017; V-IwSP, 033; V-IwSP, 037; V-IwSP, 043; V-IwSP, 044; V-IwSP, 050; V-IwSP, 043.

<sup>170</sup> V-IwSP, 011; V-IwSP, 022; V-IwSP, 027; V-IwSP, 049; V-IwSP, 003; V-IwSP, 015; V-IwSP, 037.

<sup>171</sup> V-IwSP, 045; V-IwSP, 046; V-IwSP, 051; V-IwSP, 031; V-IwSP, 002; V-IwSP, 038.

<sup>172</sup> V-IwSP, 008; V-IwSP, 032; V-IwSP, 004; V-IwSP, 052.

<sup>173</sup> V-IwSP, 012; and in the words of other Victims, “that he is told what he has to do,” V-IwSP, 010; “that they take him out of my house,” V-IwSP, 013; “I want you to take him out of the house,” V-IwSP, 027; “I want a physical boundary,” V-IwSP, 033; “I ask that he does not get close to my house, my school, my job, that he is not allowed to call me, or send me messages, or hack my email accounts,” V-IwSP, 053; “to be helped urgently in relation to this case,” V-IwSP, 019; “when I did the complaint I thought the police would take him to jail for a long period of time ‘for ever, for many months,’” V-IwSP, 012; “to have something from you that I could use to protect me,” V-IwSP, 005; “that they find a solution,” V-IwSP, 017; “that this issue is finished,” V-IwSP, 023; “to receive protection,” V-IwSP, 042; “that they take the gun from him,” V-IwSP, 017; “to receive preventive measures,” V-IwSP, 010; “a restraining order until he undertakes psychological treatment, I do not want to have contact with him, I want custody of the kids, and child support,” V-IwSP, 046; “a protective order,” V-IwSP, 039; “protective order for me and the kids,” V-IwSP, 044; “protective order, requiring him not to come 200 metres close, and that he stops the abuse,” V-IwSP, 034; “that he is taken away from my house for at least 15 days, and that he does not approach me, that I get the custody of the kids, and child support,” V-IwSP, 012; “I need to find a lawyer to continue with the case, with the civil case, but at this moment I can’t pay it,” V-IwSP, 031; “that he receives a sanction, because now he has a new girlfriend, and poor girl!,” V-IwSP, 025; “that someone puts him a limit, because if not he will continue bothering me,” V-IwSP, 021; “I ask that he leaves, I want to stay or if he wants to stay, that he gives me two weeks to leave,” V-IwSP, 010; “to move forward with the divorce because of the type of violence, which was not that significant,” V-IwSP, 045.

<sup>174</sup> V-IwSP, 030; and in the words of other Victims, “and the custody of my children,” V-IwSP, 039; “and that he recognizes that his child has a problem,” V-IwSP, 033; “that he comes to the house only to take the kids and a visitation agreement,” V-IwSP, 034.

*to start psychological therapy and an admission to the hospital*<sup>175</sup>; (iv) *receive punishment*<sup>176</sup> and (v) *draft an agreement to stop the verbal abuse*.<sup>177</sup>

Some Victims want the judicial system to keep records in the event that something happens to them (*that there are records in case something happens to me tomorrow*<sup>178</sup>). Others want to withdraw and have their complaints filed away (e.g. *desist of the case*<sup>179</sup>).

### 5.3.3.3. *I Have to Do*

Another group of Victims chooses to express their objectives in terms of what they have to do, placing themselves as the primary actor to pursue an action. A Victim from this group expresses that what she wants is *to bring him to court*<sup>180</sup> with the complaint. However, most Victims express their objectives in terms of concrete things related to actions they have to perform to end the harmful relationship (e.g. *to end the cohabitation*<sup>181</sup>). A Victim wants to *hear from the accused what type of relationship he wants with the child*,<sup>182</sup> and three Victims directly express that they want to give the accused another chance though in two of these cases there is a justification for the decision: the children or the requests of the accused to try once more.<sup>183</sup> Two Victims place the children as the reason for their complaints and what they want is solely related to their

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<sup>175</sup> V-IwSP, 014; and in the words of other Victims, “I want to ask that he receives a psychological evaluation,” V-IwSP, 040; “that he receives physical support and ...,” V-IwSP, 033; “in previous opportunities I requested that he is forced to undertake treatment,” V-IwSP, 016; “to have a psychological record required by the judicial system to determine if he needs the psychological assistance or not,” V-IwSP, 045; “that he is forced to get an admission to a hospital because he will not do it by himself,” V-IwSP, 020.

<sup>176</sup> Only one Victim wants the judicial system to punish the accused. When asked as to what type of punishment, she expresses monetary punishment because money is what the accused cares for most, V-IwSP, 048.

<sup>177</sup> V-IwSP, 015.

<sup>178</sup> V-IwSP, 022; and in the words of other Victims, “to leave records, to prevent,” V-IwSP, 024; “to leave records in case something happens to me, then the main suspect will be him,” V-IwSP, 034.

<sup>179</sup> V-IwSP, 002; and in the words of other Victims, “to close the case and give him another opportunity. He is changing, I want to see what he has changed but at this moment I do not need anything,” V-IwSP, 027; “that the case is closed,” V-IwSP, 021; “that the Argentine justice supports me, that they do not leave me alone, but now I want to desist of the claim because I have to handle too many things at this moment,” V-IwSP, 012.

<sup>180</sup> V-IwSP, 012.

<sup>181</sup> V-IwSP, 016; and in the words of other Victims, “I want to give a definite end after 5 years and that is why I came here,” V Male-IwSP, 028; “to come back home and that he is gone,” V-IwSP, 030; “I am putting you a limit, up to here you can go, but not beyond,” V-IwSP, 051; “I want to leave the house and take the kids with me, but my aunt told me that I have to first submit the complaint because if not he could charge me with ‘abandonment of domicile,’” V-IwSP, 012; “I want him to leave me alone and be in peace with my kids, I am not insulting him anymore,” V-IwSP, 044; “I want to finish with this problem before the divorce,” V-IwSP, 007; “not to experience further violence, that peace prevails,” V-IwSP, 024; “I want to take psychological therapy because I already know that I cannot force him to do anything,” V-IwSP, 045.

<sup>182</sup> V-IwSP, 052.

<sup>183</sup> In the words of the Victims, “He said that we will give ourselves a second chance,” V-IwSP, 013; “to come back with him, for my children. They miss the father, they ask about him,” V-IwSP, 054; “to cohabit like companions,” V-IwSP, 024.

well-being;<sup>184</sup> while two other Victims prioritize other problems above the domestic violence that triggered their complaints.<sup>185</sup>

Considering another problem as being more important than the domestic violence that triggered original complaints is not an exception. This is observed in other cases when Victims express that what they actually want is to force the accused to take medication for a psychological disorder or to start treatment for alcohol addiction.<sup>186</sup> Unfortunately, even when Victims express what they actually want during different meetings with justice providers and service providers, the PPO has to investigate the domestic violence.<sup>187</sup> Mediators, as understood from the interviews analysed in chapter 4, can also talk about those problems, but in the agreements they have to refer to the main issues that trigger complaints. For example, a Victim states not wanting to continue with the complaint because she knew that the PPO could not help her to force the accused to start counselling.<sup>188</sup> Moreover, these Victims show frustration during second interviews, and they often repeat that what the Legal Organizations could not understand is that their problems are not about domestic violence but rather, for example, a health problem. Contradictions in what Victims want are also observed. For example, a Victim expresses: *I want to separate, [but] I will give him another chance.*<sup>189</sup> This is not surprising considering the dominant relationship abusers have over Victims.

#### 5.3.3.4. *I Do Not Desire*

Some Victims express their objectives in terms of what they do not desire. These Victims do not desire to harm the accused with their complaints. Accordingly, they express that they do not want to harm the accused<sup>190</sup> or open a criminal case or legal action against him,<sup>191</sup> or to prohibit him from seeing their children.<sup>192</sup>

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<sup>184</sup> In the words of the Victims, “that my child lives in peace and preserves his health,” V-IwSP, 012; “that the child lives with me until the mother recovers,” V-IwSP, 038.

<sup>185</sup> In the words of the Victims, “I want to go through the surgery and go back home with my mother that needs my care,” V-IwSP, 002; “that I can leave in a welfare shelter without being robbed and hit,” V-IwSP, 007.

<sup>186</sup> V-I 1, 014; V-I 1, 016.

<sup>187</sup> V-IwSP, 014; V-IwSP, 045.

<sup>188</sup> A Victim expresses, “I do not want to spend time doing the complaint, responding to the requests because I have seen that they cannot force him to attend counselling, I did it once and that was enough,” V-IwSP, 045.

<sup>189</sup> V-IwSP, 030.

<sup>190</sup> In the words of the Victims, “I do not want to harm anyone, I want him to know that he did something wrong,” V-IwSP, 008; “I do not want to harm him; I only want his admission to the hospital,” V-IwSP, 014; “I am afraid for what can happen to him, if he can end in jail for the accumulation of complaints,” V-IwSP, 051.

<sup>191</sup> In the words of the Victims, “I do not want to open a criminal case,” V-IwSP, 030; “I do not want a protective order because I have the police station close to my house,” V-IwSP, 031.

<sup>192</sup> In the words of the Victims, “I do not want to prohibit him from visiting the children, I only want a protective order,” V-IwSP, 011; “I do not want a restraining order either because I want him to see the child,” V-IwSP, 051.

### 5.3.4. What Victims Expect

Victims expect assistance from the judicial system at large, without distinguishing who the actual provider is.<sup>193</sup> Victims expect complaints to act as: a warning;<sup>194</sup> a motivation for change in the behaviour of the accused towards themselves, Victims or children;<sup>195</sup> a good solution to their problems;<sup>196</sup> and a way to receive protection to enable the performance of another activity.<sup>197</sup> The lack of expectations<sup>198</sup> and being sceptical<sup>199</sup> towards the possibilities that the criminal justice system offers them in order to solve their problems are also present in some Victims.

Expectations change as Victims experience the legal procedure. At the beginning many Victims are surprised by the amount of participation they have to take in the legal procedure, because they expected that the procedure was about *submitting a complaint and nothing else, that he would get notified and told how he needed to behave*.<sup>200</sup> They perceive themselves as the party that takes the main bureaucratic burden<sup>201</sup> (e.g. *you are called 35,000 times but [they do] not [call] the other person*<sup>202</sup>). This creates doubt in the efficiency of the judicial system to solve problems and some Victims decide to try other means of solutions, such as visiting psychologists or personally performing judicial administrative tasks (e.g. notifying the accused).<sup>203</sup>

### 5.3.5. Perceptions of their Role

Victims were asked, during first interviews, an open-ended question in order to know on whom they think the solution to their problem depends. The following categories are identified in their answers:

I 1: Who do you think the solution of your problem depends on?					
Judicial System	Me & ...	Him	Me	Judicial System & ...	Policy Design
14	15	10	9	1	1

Table 13. Solution to Problems

Most Victims, during first interviews, believe that the solution to their problems to some extent depends on them (“Me and ...” and “Me”). Victims who state that the solution solely depends on them (“Me”) follow in number those who believe that the solution depends only on the judicial system (“Judicial System”) and only on the accused (“Him”). Lastly, one Victim believes that the solution to her problem depends

<sup>193</sup> V-I 1, 021; V-I 1, 036; V-I 1, 044; V-I 1, 022.

<sup>194</sup> V-I 1, 021; V-I 1, 032.

<sup>195</sup> V-I 1, 050; V-I 1, 038; V-I 1, 002; V-I 1, 004; V-I 2, 049; V-I 2, 052; V-I 1, 021; V-I 1, 023.

<sup>196</sup> V-I 1, 006.

<sup>197</sup> V-I 1, 053.

<sup>198</sup> V-I 1, 022.

<sup>199</sup> Ibid.; V-I 1, 030.

<sup>200</sup> V-I 1, 037; V-I 1, 021.

<sup>201</sup> V-I 1, 037; V-I 1, 021; V-I 2, 019; V-I 1, 024; V-I 1, 048.

<sup>202</sup> V-I 2, 019.

<sup>203</sup> V-I 1, 043; V-I 1, 024; V-I 2, 006.

on the judicial system and someone else (“Judicial System and ...”); while another Victim believes that it depends on the way policies are designed (“Policy Design”).

### 5.3.5.1. *Approaches to the Different Categories*

#### 5.3.5.1.1 Themselves

The Victims who mention that the solution to their problems depend solely on themselves refer to the performance of activities to seek for help such as materializing the initial motivation to act (i.e. submitting complaints) and their capacity to keep up with the legal procedure, by responding to the different requires of organizations.<sup>204</sup> Some Victims incorporate that it also helps to both control the emotional element by being less nervous<sup>205</sup> and to make deeper decisions on the type of life they want to have<sup>206</sup> (*as hinted by my psychologist*<sup>207</sup>). Another Victim focuses her answer on the accused, stating that it depends on her capacity to show the accused that her intentions are not to confront but to solve the problem.<sup>208</sup>

Some Victims were asked a closed-ended question during second interviews to determine to what extent they thought that what happened in their legal procedure up to that date depended exclusively on them. Some state that to some or to a large extent it depended on them, because they *dared* or *had the courage* to submit complaints<sup>209</sup> and exteriorized domestic violence.<sup>210</sup> Other Victims express that it depended on them to the extent that they had to perform what was needed and provide the needed information,<sup>211</sup> some with the help of lawyers.<sup>212</sup>

These partial findings show that submitting complaints and responding to requests by the judicial system are by themselves acts that demand LE.

#### 5.3.5.1.2. Themselves and

##### 5.3.5.1.2.a. ...the Accused

A large number of Victims perceive that the solution to their problems depends on both the accused and themselves.<sup>213</sup> These Victims perceive that their part in solving their problems is related to taking a first step: by seeking assistance from an external actor (e.g. going to the police station),<sup>214</sup> by no longer contacting the accused or reacting to what the accused does,<sup>215</sup> by staying firm in their decisions to put an end to

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<sup>204</sup> V-I 1, 004; V-I 1, 008; V-I 1, 050; V-I 2, 027.

<sup>205</sup> V-I 1, 004.

<sup>206</sup> V-I 1, 016; V-I 2, 027; V-I 1, 030; V-I 1, 042; V-I 1, 050.

<sup>207</sup> V-I 1, 016.

<sup>208</sup> V-I 1, 033.

<sup>209</sup> V-I 2, 006; V-I 2, 031; V-I 2, 034; V-I 2, 038.

<sup>210</sup> V-I 2, 052; V Male-I 2, 028.

<sup>211</sup> V-I 2, 026; V-I 2, 007.

<sup>212</sup> V-I 2, 026.

<sup>213</sup> V-I 1, 045.

<sup>214</sup> V-I 1, 009; V-I 1, 011.

<sup>215</sup> V-I 1, 021; V-I 1, 023; V-I 1, 051.

the relationships,<sup>216</sup> or by communicating better with the accused.<sup>217</sup> Victims perceive that the aspects of the solution that depend on the accused are: their behaviour<sup>218</sup> and the way they treated Victims,<sup>219</sup> their communication with Victims,<sup>220</sup> and their tendency to lie (e.g. lying about the existence of marriage).<sup>221</sup>

Victims who experienced consecutive physical and verbal abuse state that the solution depends on both (Victims and accused) changing their lives. Yet, when giving arguments, Victims also focus on what they need to change and this is based on the type of behaviour that the accused expects from them. For example, a Victim expresses, *I can change by staying quiet, sometimes I become nervous and shout, and this he does not like. I do not like that he tells me one thing and the other, and there is when I defend myself, and the problems exploded.*<sup>222</sup> Another Victim similarly states that it depends on both because they depend on each other to perform the household roles, *Because I cannot handle everything alone, work and the kids, and I need his help, and to live well, as I understand it, is to have a good relation with him, ... to men you have to wash their cloths, cook, and all those things, he does not want me to go to work.*<sup>223</sup>

#### 5.3.5.1.2.b. ... the Accused and the Judicial System

Another group of Victims says that the solution to their problems depends on them, the accused, and the judicial system. These Victims perceive a degree of compromise that needs to be taken by each party: themselves (not contacting the accused again,<sup>224</sup> continuing with the legal procedures<sup>225</sup>), accused (not contacting the Victims again,<sup>226</sup> accepting that they have a problem,<sup>227</sup> assuming their paternal role<sup>228</sup>), and judicial system (sending notifications to the accused,<sup>229</sup> using their tools to force a treatment for the accused,<sup>230</sup> enforcing preventive measures,<sup>231</sup> providing various options to solve problems in case options fail<sup>232</sup>).

#### 5.3.5.1.2.c. ... the Judicial System

One Victim places half of the responsibility on herself and half on the judicial system (50 and 50<sup>233</sup>). Her participation corresponds to gaining courage and submitting a

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<sup>216</sup> V-I 1, 024.

<sup>217</sup> V-I 1, 043; V-I 2, 037.

<sup>218</sup> V-I 1, 009; V-I 1, 011; V-I 1, 021; V-I 1, 023; V-I 1, 043; V-I 1, 051.

<sup>219</sup> V-I 1, 024.

<sup>220</sup> V-I 2, 037.

<sup>221</sup> V-I 1, 044.

<sup>222</sup> V-I 1, 012.

<sup>223</sup> V-I 1, 054.

<sup>224</sup> V-I 1, 041; V-I 1, 048.

<sup>225</sup> V-I 1, 046; V-I 1, 052.

<sup>226</sup> V-I 1, 041; V-I 1, 048.

<sup>227</sup> V-I 1, 046.

<sup>228</sup> V-I 1, 052.

<sup>229</sup> V-I 1, 041.

<sup>230</sup> V-I 1, 046.

<sup>231</sup> V-I 1, 048.

<sup>232</sup> V-I 1, 052.

<sup>233</sup> V-I 2, 006.

complaint, while the judicial system has to inform the accused and demand a cease in behaviour.

#### 5.3.5.1.2.d. ... the Lawyer

Another Victim expresses that it depends on herself and her lawyer. She has to appear when called and has to remind the lawyer to stay active on the legal procedure, while the lawyer has to submit documentation.<sup>234</sup>

#### 5.3.5.1.2.e. ... the Accused and Politicians

A Victim expresses that it depends on politics, on the accused, and herself.<sup>235</sup> This Victim is one of the youngest of the sample, just finishing high school. She explains that politics limits her because she is not granted an opportunity to attain formal employment and that that restricts her possibilities (*Politicians make decisions and control us*). The accused is also responsible because he is very controlling of the Victim and loses his temper. She considers herself responsible, because she allows his control and agrees to live with him.

#### 5.3.5.1.3. Judicial System

[If I come here, it is because] *I think it depends on you* [referring to the PPO]. *Anyone else? No. Because, what am I going to do? I will not go to the President of the Nation. By no means I would do that.*<sup>236</sup> Some Victims consider that the solution to their problems depends on the judicial system because they perceive it as the apparatus that makes decisions. Decisions by the judicial system are even on their behalf, since some Victims consider that they were never consulted on what they wanted in the legal procedure, with the exception of mediation.<sup>237</sup> Victims specify that the solution depends on the speed,<sup>238</sup> efficiency,<sup>239</sup> and capacity of the judicial system to provide them with options to solve their problems (e.g. mediation).<sup>240</sup> The efficiency of the judicial system was assessed by the concrete actions they take to control the situations (mostly related to behaviour of the accused) without requesting excessive participation of Victims.<sup>241</sup> The speed in notifying the accused about the complaints is perceived as an important element to enable the solution to their problems, because many Victims trust that this sole event will be a warning to the accused. As stated by one Victim, *Nobody likes to have a criminal case open.*<sup>242</sup>

Civil courts are the authority most mentioned by Victims as being responsible for resolving domestic violence complaints.<sup>243</sup> Some Victims even consider that civil

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<sup>234</sup> V-I 1, 007.

<sup>235</sup> V-I 2, 051.

<sup>236</sup> V-I 1, 005.

<sup>237</sup> V-I 2, 019.

<sup>238</sup> V-I 1, 001; V-I 2, 049.

<sup>239</sup> V-I 2, 049.

<sup>240</sup> V-I 1, 052.

<sup>241</sup> V-I 2, 050.

<sup>242</sup> V-I 1, 053.

<sup>243</sup> V-I 1, 019; V-I 1, 022; V-I 1, 047; V-I 1, 048.

courts should take the civil and criminal aspect of the case, an idea also mentioned by some justice providers and that is being implemented in other jurisdictions (e.g. Ontario, Canada).<sup>244</sup> Judges are the second most frequently mentioned authority responsible for solving problems according to Victims.<sup>245</sup> Other Victims personalize this responsibility to the person within the judicial system who handles complaints;<sup>246</sup> while other Victims respond broadly by allocating that responsibility to the judicial system at large, due to its capacity to *punish* and *grant justice*.<sup>247</sup>

#### 5.3.5.1.4. Judicial System and

One Victim adds *the lawyer* to the responsibility of the judicial system to solve her problem.<sup>248</sup> The judge, within the judicial system, is recognized as the actor who decides and provides preventive measures; while the lawyer is the actor who strategically interacts with the judicial system.

#### 5.3.5.1.5. The Accused

Ten out of fifty Victims perceive that the solution to their problems depends on the accused *because he is the one that offends* them.<sup>249</sup> Most Victims say that it depends on the extent to which the accused change their behaviour<sup>250</sup> and do not repeat the abuses;<sup>251</sup> and the extent to which the accused actively participate in proposed options by the PPO (e.g. mediation),<sup>252</sup> in addiction programmes, or in psychological therapies.<sup>253</sup> The Victims who already have an agreement add to the change in behaviour compliance with the agreement.<sup>254</sup> A Victim who suffered repeated acts of physical violence reasons solely around the desire of the accused and states that the accused is responsible *because he said that we will give ourselves a second chance and promised that this will not happen anymore*.<sup>255</sup>

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<sup>244</sup> The Integrated Domestic Violence Court hears cases once a week and, as stated on their website, “provides a single judge to hear both the criminal and the family law cases (excluding divorce, family property and child protection cases) that relate to one family where the underlying issue is domestic violence. The goals of this court are a more integrated and holistic approach to families experiencing domestic violence, increased consistency between family and criminal court orders and quicker resolutions of the judicial proceedings,” Ontario Court of Justice, “Integrated Domestic Violence Court.” In July 2014, an in-depth interview was undertaken with representatives from Legal Aid Ontario and the Barbra Schlifer Commemorative Clinic. By that time the Integrated Domestic Violence Court was hearing cases twice a month and interviewees expressed the view that the project needed to be further developed.

<sup>245</sup> V-I 1, 003; V-I 1, 026.

<sup>246</sup> V-I 1, 036.

<sup>247</sup> V-I 1, 037.

<sup>248</sup> V-I 1, 017.

<sup>249</sup> V-I 1, 015.

<sup>250</sup> V Male-IwSP, 028; V-I 1, 006.

<sup>251</sup> V-I 1, 014.

<sup>252</sup> V-I 1, 034; V-I 1, 006.

<sup>253</sup> V-I 1, 010; V-I 1, 038.

<sup>254</sup> Furthermore, the threat of submitting a new complaint was used by a Victim to force compliance of an agreement, V-I 1, 002.

<sup>255</sup> V-I 1, 013.



## 5.3.5.1.6. The Way Policies are Designed

One Victim expresses that the solution to her problem depends on a change in the way in which policies are designed. She says that domestic violence policies need to be strategically designed and implemented by the creation of a Ministry of the Family.<sup>256</sup> The Victim who brought the policy design factor is a lawyer specialist in domestic violence cases and expresses her participation in a political party and in the development of a bill proposal to improve policies on domestic violence.

5.3.5.2. *How Victims Include Themselves*

Some Victims, as above described, do not place themselves within the spectrum of factors responsible for the solution to their problems. This group was asked a follow-up question in order to understand how they perceive their role in the search for a solution to their problems. Some Victims express roles that demand personal action (e.g. presenting complaints and visiting psychologists)<sup>257</sup> and others express roles that demand responding to requirements of the different organizations (e.g. testify, present witnesses, participate in mediation, and transcribe text messages).<sup>258</sup>

The performance of actions by Victims demands empowerment because, as recognized by some Victims, *other people are paralyzed*<sup>259</sup> or *do not dare*.<sup>260</sup> Service providers can be perceived as a source of emotional support, calming Victims.<sup>261</sup> Some Victims say that complying with the requires of the judicial system is already very demanding and cannot think of anything else they could do to solve their problems.<sup>262</sup> Other Victims answer in terms of a concrete set of actions, such as going to the PPO, calling lawyers, going to the civil and criminal justice authorities;<sup>263</sup> gathering the needed evidence;<sup>264</sup> trying other means if nothing comes from the complaints;<sup>265</sup> continuing working until they find formal employment that enables them to relocate;<sup>266</sup> and waiting for the final decision, starting a divorce, and prioritizing work to be able to pay for a lawyer.<sup>267</sup>

A group of Victims takes the position of being unable or not required to do anything. For example, (i) a Victim sums up her role in being a “victim” of her ex-partner and the legal procedure saying, *Until you do not come with an injury, [the judicial system] does not become conscious*;<sup>268</sup> (ii) a Victim reconciled with the accused and reaffirms that the solution is merely in his hands because he needs to start counselling to overcome an

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<sup>256</sup> V-I 1, 032.

<sup>257</sup> V-I 1, 017; V-I 2, 053.

<sup>258</sup> V-I 1, 003; V-I 2, 053; V-I 2, 039; V-I 2, 041.

<sup>259</sup> V-I 2, 033.

<sup>260</sup> V-I 2, 006.

<sup>261</sup> V-I 2, 039; V-I 2, 041.

<sup>262</sup> V-I 1, 017; V-I 1, 010.

<sup>263</sup> V-I 1, 022.

<sup>264</sup> V-I 1, 036.

<sup>265</sup> V-I 1, 017; V-I 1, 053.

<sup>266</sup> V-I 1, 037.

<sup>267</sup> V-I 1, 026.

<sup>268</sup> V-I 1, 019.

addiction;<sup>269</sup> (iii) a Victim sees her possibilities very limited because she is not consulted about anything, with the exception of mediation;<sup>270</sup> (iv) a Victim states that she knows how to behave and that she is psychologically *perfectly well*, which is all she needs from her side;<sup>271</sup> and lastly (v) a Victim expresses that even when being able to do some things, nothing can be achieved without a lawyer and the existing law.<sup>272</sup>

Another group of Victims who suffered repeated acts of physical and psychological violence, and who reconciled with the accused, avoid the question and express how the accused perceive the problems with a tone of justification.<sup>273</sup> These Victims hesitate and centralize their response around the accused.

### 5.3.5.3. *Changes from First to Second Interviews*

Some Victims were asked (after six months) to what extent they felt in control of the legal procedure during those months. Some Victims say they are handling the problems better and taking things one step at a time,<sup>274</sup> while others feel in control because they are the *providers of information every time they are called*<sup>275</sup> and because most of the actions depended on them.<sup>276</sup> Another Victim expresses being able to control her daily activities to protect herself (e.g. being careful while on the street),<sup>277</sup> and a different interviewee states that she could not control the legal procedure at all because as a Victim she is called mostly for the purpose of checking on how she is doing.<sup>278</sup>

Moreover, during second interviews, some Victims address the issue about who they thought the solution to the problem depended on. The answers of those who address the topic are then compared with what they said during first interviews, and the following patterns are observed: (i) two Victims shifted from the judicial system as being responsible for the solution to their problems to not knowing who is responsible,<sup>279</sup> (ii) another Victim moved from the accused to not knowing,<sup>280</sup> (iii) a

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<sup>269</sup> V-I 1, 038.

<sup>270</sup> V-I 2, 019.

<sup>271</sup> V-I 1, 005.

<sup>272</sup> V-I 1, 003; during the second interview this Victim was asked, "To what extent do you think that what happened in the case depended exclusively on you?" and the Victim answers, "I do not know, without a lawyer there is nothing that one can do, you cannot defend yourself, first because I do not have the knowledge of a lawyer, and second, I do not think I could. That is why they exist! I do not have the knowledge," V-I 2, 003.

<sup>273</sup> A Victim was asked, "And what can you do to solve the problem?" and she replied, "Because he told me 'I did not kill anyone, I did not do anything, I did not hit you, I only took the key,'" V-I 1, 014; another Victim focuses on how they should change the way of communicating to avoid problems and states, "I now try to express him everything that bothers me, and try to say it with respect, and that he understands, if I can avoid problems, I avoid them, it depends on me to a large extent," V-I 2, 024.

<sup>274</sup> V-I 2, 037.

<sup>275</sup> Ibid.

<sup>276</sup> V-I 2, 045; V-I 2, 051.

<sup>277</sup> V-I 2, 051.

<sup>278</sup> V-I 2, 043.

<sup>279</sup> V-I 2, 023.

<sup>280</sup> V-I 2, 014.

Victim shifted from the judicial system to herself,<sup>281</sup> (iv) two Victims shifted from the accused to the accused and the judicial system,<sup>282</sup> (v) another Victim changed from the accused to herself and the accused,<sup>283</sup> and finally (vi) one Victim moved from herself to the accused and herself.<sup>284</sup> It can be perceived that from this small group, three out of five include themselves in their answers; while two become sceptical with regard to the chances available to solve their problems, stating that they cannot identify any longer who is responsible. The Victim who incorporates the judicial system as responsible for the solution to her problem mentions it in a positive way, stating that, thanks to the preventive measures granted by the judicial system and how they impacted on the accused, her situation changed.

### 5.3.6. Development of Individual Strategies

Victims were asked, towards the end of first interviews, what type of plans they had from that time onwards to understand how they develop individual strategies and the extent to which those strategies are affected by their access to justice. Most Victims state a passive strategy mentioning that they will continue with the legal procedures and comply with what they are asked to do.<sup>285</sup> Time is a factor that Victims consider, trusting that the sole passage of time and the way the legal procedures develop will determine their strategies.<sup>286</sup> A Victim mentions *hope* as her strategy, hope that the other party complies with the mediation agreement<sup>287</sup> or to wait and see whether the accused changes the behaviour or starts the rehabilitation programme, and therefore the relationship improves.<sup>288</sup> Another Victim expresses that, considering that she submitted the complaint one week ago, it is still difficult for her to figure out a plan.<sup>289</sup> It can therefore be considered that for some Victims submitting a complaint is as far as they can go in terms of strategy building. Consequently, stress may be placed on the important role that public policies play in the immediate time after the submission of complaints to support the building of strategies to sustain complaints.

A different group of Victims includes the conditional element to their “waiting” component, stating that they will wait, but if the accused do not change, they will separate<sup>290</sup> or go back to their country of origin.<sup>291</sup> Some Victims express that they will continue with their daily activities. For example, they will continue: (i) performing

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<sup>281</sup> V-I 2, 037.

<sup>282</sup> V-I 2, 034.

<sup>283</sup> V-I 2, 006.

<sup>284</sup> V-I 2, 051.

<sup>285</sup> V-I 1, 003; V-I 1, 005; V-I 1, 006; V-I 1, 007; V-I 1, 011; V-I 1, 016; V-I 1, 020, June 27, 2013; V-I 1, 021; V Male-I 1, 028; V-I 1, 030; V-I 1, 033; V-I 1, 036; V-I 1, 038; V-I 1, 048; V-I 1, 008.

<sup>286</sup> V-I 1, 048; V-I 1, 015; V-I 1, 037; V-I 1, 045; V-I 1, 011.

<sup>287</sup> V-I 1, 052.

<sup>288</sup> V-I 1, 054; V-I 1, 016; V-I 1, 038; V-I 1, 042; V-I 1, 014; V-I 1, 006; V-I 1, 026; V-I 1, 051.

<sup>289</sup> V-I 1, 015.

<sup>290</sup> V-I 1, 012; V-I 1, 013.

<sup>291</sup> V-I 1, 027.

their routine (going to work or studying),<sup>292</sup> (ii) talking with their lawyers,<sup>293</sup> (iii) attending counselling,<sup>294</sup> and (iv) consulting with a loved one.<sup>295</sup>

Many Victims develop their strategies in terms of actions. Some of these actions are related to the legal procedures (e.g. gather evidence,<sup>296</sup> call a lawyer,<sup>297</sup> participate in mediation,<sup>298</sup> try to get a divorce,<sup>299</sup> and design an agreement to be proposed to the accused<sup>300</sup>), to their personal security (e.g. take security precautions after the accused are summoned,<sup>301</sup> start taking more daily security precautions to avoid contact with the accused,<sup>302</sup> shout for help or call 911 if the accused appear<sup>303</sup>), and to their lives (e.g. searching for employment, study, and/or a house;<sup>304</sup> ending relationships;<sup>305</sup> calling psychologists;<sup>306</sup> avoiding contact and continuing with their daily routine<sup>307</sup>).

Two Victims give a negative answer. One admits not having a plan and wanting to put an end to actions (e.g. *I do not want to continue going from one place to the other* [i.e. referring to the bureaucratic requires]<sup>308</sup>) and another states having *No plan, I end here*.<sup>309</sup>

Some Victims address during second interviews, after six months, their strategy from that time onwards. No changes are observed in the strategy developed within a six-month interval.<sup>310</sup> Only one Victim states that she stopped taking security precautions after a couple of months, even when the legal procedure was active.<sup>311</sup>

The strategies of Victims to deal with their problems and the strategies of the judicial system to handle conflicts proceed through different paths. Most Victims do not contemplate that the transit through justice helped them to develop individual strategies, and mostly they place their hopes on the action of the organization. They

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<sup>292</sup> V-I 1, 021; V-I 1, 023; V-I 1, 024; V-I 1, 052; V-I 2, 049.

<sup>293</sup> V-I 1, 033; V-I 1, 022; V-I 1, 003.

<sup>294</sup> V-I 1, 030; V-I 2, 049.

<sup>295</sup> V-I 1, 022; V-I 2, 049.

<sup>296</sup> V-I 1, 036.

<sup>297</sup> V-I 1, 030; V-I 1, 011; V-I 1, 046.

<sup>298</sup> V-I 1, 023; V-I 1, 024; V-I 1, 034; V-I 1, 014; V-I 1, 032; V-I 1, 010; V-I 1, 050; V-I 1, 053.

<sup>299</sup> V-I 1, 007.

<sup>300</sup> V-I 1, 045.

<sup>301</sup> V-I 1, 032.

<sup>302</sup> V-I 1, 050.

<sup>303</sup> V-I 1, 025.

<sup>304</sup> V-I 1, 007; V-I 1, 005; V-I 1, 017; V-I 1, 037.

<sup>305</sup> V Male-I 1, 028; V-I 1, 048; V-I 1, 044.

<sup>306</sup> V-I 1, 043; V-I 1, 010; V-I 1, 048; V-I 1, 041.

<sup>307</sup> V-I 1, 009.

<sup>308</sup> V-I 1, 019.

<sup>309</sup> V-I 1, 047.

<sup>310</sup> Victims address similar strategies, such as, gathering evidence and protecting themselves, V-I 2, 001; trying to agree with the accused on parental responsibilities and continuing working, V-I 2, 012; reacting in case of another violent event, V-I 2, 024; ending the relationship if the accused repeats the behaviour, V-I 2, 026; not having any concrete strategy, V-I 2, 031; protecting themselves and not approaching the judicial system again because it is very time consuming, V-I 2, 019; continuing taking personal security precautions, V-I 2, 034; continuing working, studying, and planning a trip, V-I 2, 050; continuing with psychological therapy to learn how to react to verbal abuse, V-I 2, 045.

<sup>311</sup> V-I 2, 050.

“turn on the lights” of the judicial system and wait to see what happens. A reason for this can be that all the strategic efforts of Victims go into the action of submitting complaints, reaffirming the high level of LE already present in those Victims who submit complaints. Policies aiming at protecting and strengthening the strategic capacity of Victims immediately after complaints are submitted are therefore important. Ideally, in respect of their problems, Victims should develop individual capacity instead of relying entirely on the judicial system, because as it is observed from reality, there is a limit as to what the judicial system can do to help Victims.

The development of strategies, moreover, seems not to be an individual elaboration, but rather a consequence of the help of others. As mentioned by an interviewee, *I need the law and my lawyer to do something; alone I cannot do anything*.<sup>312</sup> Connecting with Legal Organizations is not perceived as contributing to the capacity of Victims to develop individual strategies to deal with problems, but rather it seems to create a dependency on the actions of the judicial system. Victims continue to be unsure about what they can do for themselves without Legal Organizations. Moreover, Victims do not perceive in the assistance provided by Legal Organizations a source that triggers the development of strategies to handle and end problems.

### 5.3.7. Participation in the Policy Process

People who are legally empowered, as suggested by some scholars, may increase participation in the policy process because proper mechanisms were given for them to voice themselves.<sup>313</sup> This is understood by some scholars as the capacity people gain to participate in democracy when they are legally empowered. As studied in the previous chapters, legal provisions and Legal Organizations provide options for people to participate in the policy process and exercise democratic participation on their own initiative and alongside the traditional mandatory forms of participation (e.g. the vote). However, this study shows that those options are not regularly conceived by Victims. Only one Victim participates in the policy process because she is part of a political party. This Victim has two unique characteristics if compared to other Victims of the sample: she is a lawyer and her area of specialization is domestic violence.<sup>314</sup> She works with domestic violence cases every day and feels committed to her clients. She works on a bill that recommends stronger criminal penalties for the violation of preventive measures and the creation of a Ministry for the Family. This Victim has a good understanding of the problems, struggles and risks Victims face when they access to justice. The results of this study observe that understanding of the topic and daily relation with a subject could be associated with the possibilities of exercising participation in the policy process.

Victims become active members by creating awareness in other Victims, and therefore, other forms of voluntary associations may occur. Sharing experiences of abuse with others seems to be an element that initiates a chain of recommendations

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<sup>312</sup> V-I 1, 003.

<sup>313</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 12.

<sup>314</sup> V-I 1, 032.

and a feeling of non-isolation.<sup>315</sup> Victims mention during interviews a network of transmission of information. Some Victims submit their complaints because other Victims recommended they do so;<sup>316</sup> other Victims start a chain by recommending to other Victims that they submit complaints;<sup>317</sup> and others who did not have the chance state that if they encountered someone with the same situation, they would recommend they submit a complaint.<sup>318</sup> Only one Victim, who is a lawyer but not specialized in family law, says that she does not know what she would recommend to someone else, but mentions that a friend who also suffered harassments consulted a judge and the judge told her to *pose a threat on him, but not to submit a complaint*.<sup>319</sup>

Victims also show themselves to be sensitive to what happens to other Victims. Victims were asked what they learned or what surprised them the most from their first meeting at an access point (i.e. police station, OVD, PPO). Many who accessed through the OVD mention that what surprises them the most is the number of women suffering the same problem. Victims recognize that as a learning experience. This sentiment may also result in participation in the policy process, if those Victims preserve interest and find the opportunity to participate.

Some actions can have the potential of triggering participation in the policy process through voluntary associations. Nevertheless, no Victim expresses a desire or even the contemplation of associating with other Victims. One Victim, however, expresses a general desire to work with other Victims and to help them in their problems.<sup>320</sup> There is a potential that these Victims find their way to participate in the policy process if the compromise increases.

#### 5.4. Rights Awareness

This sub-section on rights awareness analyses the understanding Victims gain about their rights through access to justice.<sup>321</sup> Rights awareness is a way to ensure enablement and enforcement of rights because Victims, by means of understanding, are expected to enhance participation in the problems that motivate their complaints. This sub-section analyses the way Victims become aware of the resources available to obtain access to justice (5.4.1.) and the options given by the legal procedure (5.4.2.). Moreover, this sub-section contemplates how Victims perceive the legal procedure (5.4.3.) and the legal terminology (5.4.4.), and how Victims gain understanding of their

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<sup>315</sup> V-I 1, 041.

<sup>316</sup> V-I 1, 012; V-I 1, 015; V-I 1, 026.

<sup>317</sup> Victims recommended to submit a complaint in general, and those who specify the place, mention the police and OVD, V-I 1, 016; V-I 1, 017; V-I 1, 019; V-I 2, 019; V-I 1, 026; V-I 1, 006; V-I 2, 003; V-I 2, 034; V-I 2, 045 (also recommends psychological therapy).

<sup>318</sup> Victims would recommend either to submit a complaint in general, to call the 0800MUJER, or to go to the OVD, V-I 1, 004; V-I 1, 025; V-I 1, 026; V-I 1, 041; V-I 2, 035; V-I 2, 039.

<sup>319</sup> V-I 2, 001.

<sup>320</sup> V-I 1, 034; V-I 2, 034.

<sup>321</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 11. Those authors use the word "knowledge" instead of "understanding." This study, however, uses the word "understanding," which seems more realistic to what lay people can gain when they obtain access to Legal Organizations.

rights as they participate in the legal procedure (5.4.5. and 5.4.6.). This sub-section also analyses elements that show themselves to be relevant for the rights awareness of Victims: their socio-economic background (5.4.7.), the media (5.4.8.), and their social network (5.4.9.). This sub-section concludes with a note on rights awareness perceived as a process that entails many factors besides access to justice (5.4.10.).

### 5.4.1. Resources

Victims become aware of different resources after they access the first access points; and realizing that there are other options to submit complaints besides police stations is a revelation for some Victims. As explained by one Victim: *To tell you the truth, I did not know that there were [other resources] ... I knew that, I thought that the police solved everything.*<sup>322</sup> In most cases, Victims follow the directions given by the access points in terms of referrals with limited understanding about where they are sent and for what purposes. For example, some Victims go to the OVD because the police officer or line 137 advises them to go there.<sup>323</sup> Others go to OFAVyT because they are called to attend<sup>324</sup> or to the PPO because the OVD told them to do so.<sup>325</sup> Another group considers calling psychologists and/or lawyers after OFAVyT recommends they use those resources,<sup>326</sup> or submitting complaints following the suggestions of psychologists.<sup>327</sup>

### 5.4.2. Options

The awareness of options within a specific legal procedure has the same dynamic as that of the resources. Victims mostly follow recommendations. For example, a Victim says she will participate in mediation because it was recommended to her by OFAVyT.<sup>328</sup> Another expresses that she agrees to participate in the suggested mediation so the accused meets on that occasion with a psychologist. She was then informed that mediation was not a visit to the psychologist, and she responds: *Mmmm, no, it is like an announcement for him not to repeat [the behaviour] again.*<sup>329</sup> In that situation, even when not understanding the options, the Victim adapts her response. Similarly, another Victim explains that she was offered mediation by the prosecutor and she accepted until OFAVyT called her and explained what the mediation meant for the accused.<sup>330</sup> The Victim then decided not to accept mediation. A different group of Victims follows the directions of their lawyers,<sup>331</sup> and a Victim of this group explains

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<sup>322</sup> V-I 1, 042.

<sup>323</sup> V-I 1, 002; V-I 1, 006; V-I 1, 045; V-I 1, 043.

<sup>324</sup> V-I 1, 006.

<sup>325</sup> V-I 1, 044.

<sup>326</sup> V-I 1, 004; V-I 1, 005; V-IwSP, 014; V-I 1, 015.

<sup>327</sup> V-I 1, 003.

<sup>328</sup> V-IwSP, 008.

<sup>329</sup> V-I 1, 013.

<sup>330</sup> V-I 2, 006.

<sup>331</sup> V-I 1, 003; V-I 1, 005.

that she trusts in the active performance of her lawyer because she was paying for the service.<sup>332</sup>

Only two Victims show some leading participation in assessing recommendations given by organizations. In one case the Victim recognizes concrete simple options to choose from;<sup>333</sup> while in another case the Victim searched on the Internet for information before meeting with the prosecutor.<sup>334</sup> Providers therefore seem to have responsibilities when offering options to Victims because very often they follow directions without assessing the offered information.

Being informed about their options and the consequences of their use seems not to be enough. Some Victims who attend mediation express that they felt nervous before and during the meeting because they did not know how the accused would react, and they could not freely participate.<sup>335</sup> Strategies on how Victims can be fully aware about what mediation is, what elements are available to ensure their safety, and what they can do in case of an unforeseen circumstance, can be beneficial (e.g. how to react before an abusive reaction of the accused). It may be noted that service providers of a Witness and Victims Assistance Programme in Canada consider the use of “maquettes” effective in the training of Victims before mediation, hearings, or trials. With the “maquettes” service providers recreate the real set-up, representing the physical space and the different actors and their functions that will be present during the actual event.<sup>336</sup>

Victims, though few, develop a personal opinion about the options provided by the access points or other organizations. For example, some Victims mention being offered mediation but not wanting to participate because they could not imagine themselves talking to the accused<sup>337</sup> or the accused complying with an agreement.<sup>338</sup> Other Victims explain that they were referred to the wrong place (i.e. the PPO or OVD) and believe these places cannot provide them with the help they need (i.e. counselling for the accused).<sup>339</sup> In the already mentioned case of a Victim who is a minor, she expresses during the second interview that she completely ignores her options to seek help in case of feeling threatened.<sup>340</sup> The Victim expresses feeling defenceless and fearful. The mother knew the resources available, yet the Victim did not. This example illustrates how paternalistic policies may take the burden away at an initial stage but at the cost of leaving the Victims helpless.

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<sup>332</sup> V-I 1, 003.

<sup>333</sup> A Victim decides for mediation only if the alternative option is to have the case closed, V-IwSP, 022.

<sup>334</sup> Only one Victim expresses understanding the different options given by the prosecutor and making a conscious decision based on what she thought was best. This Victim expresses researching on the Internet before meeting with the prosecutor, V-I 2, 034.

<sup>335</sup> V-I 2, 015.

<sup>336</sup> SP Canada, WVAP.

<sup>337</sup> V Male-I 1, 028; V-IwSP, 023; V-I 1, 001.

<sup>338</sup> V-I 1, 022.

<sup>339</sup> V-IwSP, 014; V-I 1, 038.

<sup>340</sup> V-I 2, 052.



### 5.4.3. Legal Procedure

During first interviews some Victims express that they *more or less* understand the stage of the legal procedure and that they feel *a little bit* oriented.<sup>341</sup> Victims were asked a “yes” or “no” question during second interviews to determine whether they understood, at all times, what was going on in their complaints. Thirteen Victims said “yes”;<sup>342</sup> eight Victims said “some things yes, and some others no”;<sup>343</sup> and three Victims said “no.”<sup>344</sup> This closed-ended question reveals a contradiction with the answers collected during open-ended questions in which only a few Victims express understanding the legal procedure. From the legal documents reviewed and the participation in meetings by OFAVyT, it is observed that providers do explain the legal procedure to Victims but the information is not equally absorbed. Victims, moreover, explain that meetings with OFAVyT and prosecutors help them understand more about their legal procedure and about how to take self-care.<sup>345</sup>

Most Victims leave their complaints in the hands of Legal Organizations or lawyers and become passive waiters of directions and news. In most cases, when Victims know about the legal procedure, it is because they were provided with this information, but not because they sought it. A Victim explains that she knows what is going on at the Public Defender of Minors and the Disabled because *they always call [her]*.<sup>346</sup> While another Victim, who submitted a complaint to enforce child support, did not know the amount she could claim and is waiting for the decision of the PPO and civil court.<sup>347</sup> Another Victim, for example says, *All those things for me are very important, is like someone is taking care of me. It is someone I have, someone I can count on.*<sup>348</sup> Too many follow-up calls can also be confusing. For example, a Victim explains that right after she submitted the complaint she was called from everywhere and she did not understand. The only aspect she could understand was what was going on at the PPO. She decided to close all other cases and stay only with the case of the PPO.<sup>349</sup> A

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<sup>341</sup> V-I 1, 004; V-I 2, 003.

<sup>342</sup> V-I 1, 001; V-I 2, 003; V-I 2 014; V-I 2, 024; V-I 2, 026; V-I 2, 033; V-I 2, 037; V-I 2, 038; V-I 2, 039; V-I 2, 041; V-I 2, 045 (e.g. the Victim states, “Yes, I understood that there was nothing they could do because the case was not very serious. Those are the messages I remember”); V-I 2, 052; V-I 2, 053.

<sup>343</sup> A Victim clarifies that sometimes yes, and sometimes she needs help from her father or other people who understand more than her, V-I 2, 007; another Victim explains that she understood that she has her rights, that no man can humiliate her, and that she has to have self-esteem, and that she is not alone because the judicial system supports her, V-I 2, 012; a different Victim expresses, “I understood that I have the help I need, and that it is risky to live with a person like him, though I decided to take the risk and give him another chance,” V-I 2, 027; another Victim explains that she needed to ask her lawyer about “some things,” V-I 2, 035; lastly, a Victim says, “I understood what was happening at the PPO because they called me and explained. But from the OVD, I did not understand anything because they never called me,” V-I 2, 043; the group is completed by, V-I 2, 044; V-I 2, 054; V Male-I 2, 028.

<sup>344</sup> V-I 2, 019; V-I 2, 050 (adding that to understand she needed to call and ask for clarifications and even during conversations with providers some of the vocabulary was difficult to understand); V-I 2, 051.

<sup>345</sup> V-I 2, 006 (e.g. keeping the telephone numbers at hand); V Male-I 2, 028.

<sup>346</sup> V-I 2, 038.

<sup>347</sup> V-I 2, 039.

<sup>348</sup> V-I 2, 006.

<sup>349</sup> V-I 2, 043.

different Victim affirms that she does not understand anything. In her words, *With the ignorance I have with these things, I do not understand anything*.<sup>350</sup>

Subsequent meetings at different organizations make Victims deduce that OVD, civil courts, and the PPO (in this order) are part of one legal procedure.<sup>351</sup> Victims deduce a path is linked by directions: Victims go to the OVD with a request, OVD tells them to go to the civil court, the civil court refers Victims to the police, and Victims receive a call from the PPO.

Only one Victim stresses that she repeatedly called the PPO to understand the stage of the legal procedure because the behaviour of the abused had not ceased. She faced difficulties in understanding the information provided and did not dare to ask for clarifications.<sup>352</sup> She received the information as a fixed message with no possibilities to participate. In other situations, Victims might understand the next step needed (i.e. hiring a lawyer as suggested by the PPO), but are unable to afford it.<sup>353</sup>

The relation with lawyers is different, since Victims call lawyers when needing clarifications. A Victim expresses that she somehow understands the legal procedure because her lawyer explains it to her, though she has doubts as to the extent it is necessary for her to understand the process when she actually needs someone to solve the problem.<sup>354</sup> A Victim says that she understands *everything* because she receives calls with directions on what to do, and when she cannot understand she calls her lawyer.<sup>355</sup> A Victim who claims to have a lawyer explains that she has no idea of what is going on in her case, and fifteen days earlier she contacted her lawyer and was told that they were waiting for the *answer to a paper*.<sup>356</sup> Others understand from the interviews at Legal Organizations that what they need is a lawyer (e.g. to handle a divorce<sup>357</sup>).

Some Victims explain that it was difficult for them to understand the information given at the moment of first complaints due to stress. Inflexibility of the legal procedure does not contribute to understanding either, and a number of Victims perceive the legal procedure as not being flexible enough to adjust to their needs.<sup>358</sup> Time seems not to improve the understanding of some Victims about what each organization is doing in relation to their complaints.<sup>359</sup> Many Victims preserve a level

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<sup>350</sup> V-I 2, 006.

<sup>351</sup> V-I 2, 052.

<sup>352</sup> V-I 2, 050.

<sup>353</sup> A Victim was asked whether she was aware of the pro bono lawyers. At first she said no, but further into the conversation she recalled receiving numbers of “cost-free” attorneys, V-I 2, 031.

<sup>354</sup> V-I 2, 003.

<sup>355</sup> V-I 2, 017.

<sup>356</sup> V-I 2, 044.

<sup>357</sup> V-IwSP, 007.

<sup>358</sup> V Male-I 2, 028; V-I 2, 034.

<sup>359</sup> A Victim explains that she is still confused even after one year, V-I 1, 043; another Victim never understood the differences or knew whether complaints were open because she received a call from the PPO after one year from her last contact with the accused, V-I 1, 025.

of confusion at the time of second interviews, and Victims remain confused about what is happening with their complaints and about what needs to be done.<sup>360</sup>

Many times, as perceived from the above, Victims follow suggestions related to their legal procedures without understanding where they are going and why. In some situations, because they do not understand, they start the legal procedure with inaccurate information gathered through their life experiences (e.g. TV or what others told them). This creates false expectations and sometimes false fears. The data suggest a relation between understanding and responsiveness, however. Victims show a closer relation with their complaints when they understand the purpose and objectives of Legal Organizations in their complaints and when they perceive the Legal Organizations to be responsive. Responsiveness of the Legal Organizations is defined by Victims in light of the follow-up calls they receive.

#### 5.4.4. Legal Terminology

Victims were asked to express in their own words what their problems were (5.2.7.). That data hint that most Victims who access the judicial system already incorporated some legal terminology to define their problems. This may happen because Victims are given the terminology when they submit complaints, since providers have to frame complaints within a crime or contravention. However, even when most Victims express their problems using the legal terminology, this legal understanding does not seem to increase. As the legal procedure advances Victims continue thinking in terms of problems, in terms of help, in terms of the desire of feeling better, or in terms of overcoming a situation.

Technical words such as mediation and probation,<sup>361</sup> together with the names of Legal Organizations (e.g. OVD, OFAVyT, civil court), are not always remembered by Victims.<sup>362</sup> Often they are associated with the time of the year when the events occurred, or by the physical addresses of Legal Organizations.<sup>363</sup> Some Victims explain that when they do not understand what is being said, they always ask.<sup>364</sup> A Victim explains that when she calls the PPO to receive information about her complaint, some of the information is provided very fast and using technical words without contemplating her detachment to those words (e.g. “probation”).<sup>365</sup>

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<sup>360</sup> A Victim says during the second interview that mediation is scheduled but she does not know what it is about, V-I 2, 003; another Victim brings to the second interview all the legal documents without understanding what was what and what she needed to do with them, V-I 2, 006; a different Victim asks, during the second interview, “What is civil? The one where I need to bring a lawyer?” V-I 2, 011.

<sup>361</sup> V-I 2, 050.

<sup>362</sup> Ibid.

<sup>363</sup> e.g. a Victim refers to mediation as “the option of September,” V-I 1, 13.

<sup>364</sup> V-I 2, 007.

<sup>365</sup> V-I 2, 050.

Legal terminology shows itself to be foreign and abstract to most Victims. As three Victims express in relation to different legal words,

- Referring to the word “rights:”  
*Yes, but those words were always difficult to understand. I normally use other words; it is like ‘politics.’ I remember at school they always said ‘everything is politics, everything is politics,’ and to me it sounded so, like, I do not know.*<sup>366</sup>
- Referring to the additional research she had to do in order to understand the legal procedure:  
*And we add all the bureaucratic terminology of ‘restraining,’ ‘solution,’ ‘measures,’ you have no idea what it all means, until you need to understand [because is part of the terminology of the problem].*<sup>367</sup>
- Referring to the calls with the PPO when the stage of the legal procedure was explained to her:  
*They gave me the feeling that they were speaking very fast, they gave me little information, and they spoke about ‘probation,’ ‘probation.’ At that stage they did speak difficult ‘and that probation, and if not we go to trial.’ My head was a little messy, I did not understand much.*<sup>368</sup>

Legal terminology can be an impediment to the understanding of rights, and efforts can be made to avoid it or to incorporate a terminology that is understandable to Victims. Yet, some Victims perceive the legal terminology as a label of “seriousness.” The same Victim who felt lost with the legal term “probation” explains that when she was called and informed that there was a hearing scheduled she realized that it was not acceptable to be harassed.<sup>369</sup>

#### 5.4.4.1. Written Notifications

A larger group of Victims states receiving all communications by telephone and none by mail.<sup>370</sup> From the group that receives written notifications by mail, a large number express understanding without problems and without the assistance of lawyers;<sup>371</sup> though some express calling lawyers right away even when thinking they understood.<sup>372</sup> Others explain not paying too much attention to the content and solely recalling the date they are scheduled to appear.<sup>373</sup>

Victims who express difficulty in understanding written notifications highlight the terminology and the purpose of the documents. A Victim explains:

*It is difficult when receiving notifications. You do not understand what they are for, if you have done something wrong. And, if the notification says what it is for, it is*

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<sup>366</sup> V-I 2, 051.

<sup>367</sup> V-I 2, 034.

<sup>368</sup> V-I 2, 050.

<sup>369</sup> Ibid.

<sup>370</sup> V-I 2, 024; V-I 2, 023; V-I 2, 037; V-I 2, 038; V-I 2, 043; V-I 2, 052.

<sup>371</sup> V-I 2, 007; V-I 2, 045; V-I 2, 053; V-I 2, 037.

<sup>372</sup> V-I 2, 035; V-I 2, 019.

<sup>373</sup> V-I 2, 021.

*still difficult to understand the vocabulary because it uses difficult terminology. ...  
In these situations I call my lawyer.*<sup>374</sup>

Another Victim elaborates on the written notifications and states that they represent a materialization of the decision they have made. She further states that what is difficult is that the written notification led her to a deeper assimilation of her problem.<sup>375</sup>

#### 5.4.4.2. Brochures

Brochures do not seem to be very effective in transmitting legal information. Even when Victims are given brochures, and in many organizations they are available, only a few Victims express that they read them<sup>376</sup> and remember what they said.<sup>377</sup> Victims who remember receiving a brochure with information recall the act of receiving the brochure and some even recall reading it,<sup>378</sup> and only one remembers the content.<sup>379</sup> Another Victim remembers reading in a brochure of having a right to require information about her complaint from the PPO, and a different Victim does not even know what brochures are, even when being asked about them by using different words.<sup>380</sup> Victims regularly ignore brochures or do not remember receiving them.<sup>381</sup> For example, even when fieldwork notes of this study register that a Victim received a brochure in her hand by OFAVyT, when asked during the second interview, the same Victim stated that she never received a brochure.<sup>382</sup>

#### 5.4.5. Understanding Rights during First Interviews

Victims were asked during first interviews whether they could recall aspects that surprised them or things that they learned from the assistance received from the first access points and from the meetings with OFAVyT. Awareness of rights is not the main take away from the access to organizations (i.e. OVD; the PPO, including meetings with OFAVyT, prosecutors, and mediators; police stations; and courts). Victims mostly remember how things worked out in general (e.g. well, not that well) and how they felt (e.g. supported, helped).<sup>383</sup>

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<sup>374</sup> V-I 2, 019.

<sup>375</sup> V-I 2, 039.

<sup>376</sup> Some Victims remember having them, but not reading them (V-I 2, 051; V-I 2, 037); or reading them but not remembering what they say (V-I 2, 021; V-I 2, 019; V-I 2, 053; V-I 2, 006).

<sup>377</sup> e.g. Victim remembers the different types of violence, V-I 2, 034; two other Victims remember that the brochure explained their rights, V-I 2, 033; V-I 2, 034; a different Victim remembers learning about her right not to be discriminated against, V-I 2, 007; a Victim remembers reading brochures at the OVD, understanding them at the time, but not remembering any longer, V-I 2, 035; another Victim remembers reading them and finding explanations about her rights, though she said that she needed a person to explain to her, V-I 2, 045; the mother of the Victim who is a child says that she reads them on the bus, though the Victim says she never read them, V-I 2, 052; lastly, a Victim remembers learning from brochures about her right to require information from the PPO, V-I 2, 050.

<sup>378</sup> V-I 1, 048.

<sup>379</sup> V-I 1, 050.

<sup>380</sup> V-I 2, 023.

<sup>381</sup> V-I 2, 041.

<sup>382</sup> V-I 2, 024.

<sup>383</sup> V-I 1, 030; V-I 1, 022.

Some Victims express understanding from the meetings that solving problems implies enhancing responsibility for their own lives,<sup>384</sup> cooperation between parties,<sup>385</sup> and between them and Legal Organizations.<sup>386</sup> Victims who perceive that they need to work together with Legal Organizations argue that these can help as long as they also cooperate by complying with requests.<sup>387</sup> One Victim expresses herself in terms of enhancing control over her decisions,<sup>388</sup> in terms of needing to learn to decide about the type of life wanted, assuming that the law has to support her decision, because the law cannot tell her who she has to live with.<sup>389</sup> A Victim, however, perceives the sole responsibility in Legal Organizations and expresses that they are meant to help her, though she does not trust in their capacity to do so.<sup>390</sup>

Lawyers,<sup>391</sup> prosecutors and OFAVyT,<sup>392</sup> and family members<sup>393</sup> are mentioned as resources that help Victims understand what civil and criminal justice system do. One Victim highlights the advantage of being able to communicate with the prosecutor via e-mail.<sup>394</sup> Follow-ups made by the PPO are mentioned by some Victims as helpful in understanding the legal procedure.<sup>395</sup>

A significant group of Victims mentions being surprised about the legal procedure they encountered after submitting complaints.<sup>396</sup> In particular, Victims mention learning about the resources available to help them find solutions,<sup>397</sup> about how Legal Organizations work in general,<sup>398</sup> about the availability of providers trained to assist them,<sup>399</sup> and about the actions that the judicial system could enforce<sup>400</sup> (e.g. accused could be forced to temporarily leave a house owned by him to preserve the best interest of children<sup>401</sup>). Only one Victim expresses that knowing more about the function of the resources and her available options helped her decide how she wanted to continue with the case.<sup>402</sup> Some Victims from that group mention specifically

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<sup>384</sup> V-I 1, 017.

<sup>385</sup> V-I 1, 009.

<sup>386</sup> A Victim with multiple complaints stresses how OVD highlighted her responsibility in the resolution of the conflicts, V-I 1, 012; another Victim expresses that her problem is the alcohol addiction of the accused and highlights that providers explained to her that if the accused does not start treatment, the situation will not improve, and she will need to decide whether to stay or leave, V-I 1, 014.

<sup>387</sup> V-I 1, 012; V-I 1, 014.

<sup>388</sup> V-I 1, 016.

<sup>389</sup> Ibid.

<sup>390</sup> V-I 1, 021.

<sup>391</sup> e.g. a Victim contacts the lawyer only when she cannot understand information from prosecutors, V-I 2, 053.

<sup>392</sup> V Male-I 2, 028; V-I 2, 041; V-I 2, 043; V-I 2, 053.

<sup>393</sup> e.g. V-I 1, 007.

<sup>394</sup> V-I 2, 053.

<sup>395</sup> e.g. V-I 2, 043.

<sup>396</sup> V-I 1, 038; V-I 1, 011; V-I 1, 008; V-I 1, 012.

<sup>397</sup> V-I 1, 014; V-I 1, 051; V-I 1, 012.

<sup>398</sup> V-I 1, 030.

<sup>399</sup> V-I 1, 008; V-I 1, 011.

<sup>400</sup> V-I 1, 010.

<sup>401</sup> Ibid.

<sup>402</sup> The Victim decides to continue with the assistance by the health insurance for the elderly because they provide a holistic assistance (physical and psychological) for the addiction of the accused, V-I 1, 014.

learning about the steps to follow and clarify that it is not easy to comply with all appointments and reply to the number of calls (including appointments with OVD, the PPO, the civil court, and the Public Defender of Minors and the Disabled).<sup>403</sup> A different Victim mentions understanding that she is not alone and that *if something happens*, [she has] *the numbers to seek help*.<sup>404</sup> Follow-up calls received by the PPO or the Public Defender of Minors and the Disabled help Victims to trust in the assistance and to continue with the cases. A Victim, for example, compares OVD with the PPO, and recalls that the fact that the PPO called her back made her believe that they cared and gave her a feeling of support.<sup>405</sup> Moreover, for one Victim the fact that she received a concrete answer from the judicial system reassured her in her decision to submit a complaint and to ease her feeling of *sin*.<sup>406</sup>

The confusion of Victims persists and increases when other state organizations are involved in the problems (e.g. Public Defender of Minors and the Disabled or Council for the Rights of Children and Adolescents). Victims, there, normally do not understand who is doing what and what type of actions they need to take in the different places.<sup>407</sup> Many times Victims refer to these places by their physical address instead of their names,<sup>408</sup> and recall the options given by the month when these take place.<sup>409</sup> Often Victims are not proactive, rather they wait to be called.<sup>410</sup> This relates also to how for some Victims the PPO is the last stage of the legal procedure, because they are the ones that keep on calling Victims.

It was observed that Victims were not considering the awareness of rights as a take away from the access to justice. Then, they were asked directly whether they recalled receiving legal information, or if they knew what their rights were, or if they had any intuition about them. Many Victims do not recall having their rights explained.<sup>411</sup> Victims talk not thinking in terms of their rights or knowing what they are.<sup>412</sup> Victims do remember what they talked about during meetings with providers. For example, they mention *We spoke about the child support*.<sup>413</sup> Other Victims ignore the question and highlight what they want with complaints<sup>414</sup> (e.g. wanting to stop the aggression<sup>415</sup>). On most occasions, after the question was asked, Victims reacted with a pause, surprised, and gave a dubious answer. Some immediately reacted by stating they do

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<sup>403</sup> V-I 1, 038; V-I 1, 008; V-I 1, 014.

<sup>404</sup> V-I 1, 012.

<sup>405</sup> Ibid.; V-I 1, 015.

<sup>406</sup> This Victim submitted a complaint against her niece for domestic violence committed by her niece on the niece's son, V-I 2, 038.

<sup>407</sup> V-IwSP, 019; V-I 1, 016.

<sup>408</sup> V-I 1, 016.

<sup>409</sup> V-I 1, 013.

<sup>410</sup> V-I 1, 016.

<sup>411</sup> V-I 1, 004; V-I 1, 008; V-I 1 013 ; V-I 1, 014; V-I 1, 016; V-I 1, 022; V-I 1, 037; V-I 1, 048; V-I 1, 051; V-I 1, 007.

<sup>412</sup> V-I 1, 007; V-I 1, 005; V-I 1, 004; V-I 1, 003; V-I 1, 002; V-I 1, 008; V-I 1, 013; V-I 1, 016; V Male-I 1, 028; V-I 1, 011; V-I 1, 015; V-I 2, 012; V-I 1, 048; V-I 1, 021; V-I 1, 019; V-I 1, 010.

<sup>413</sup> V-I 1, 004.

<sup>414</sup> V-I 1, 005.

<sup>415</sup> Ibid.

not think about their rights because they never thought they would encounter such an experience, mostly because they previously trusted in their own capacity to solve problems without the intervention of the judicial system.<sup>416</sup> A Victim pauses to answer the question and then elaborates on her rights as a reward for her good social behaviour (i.e. paying taxes, working, and not bothering others).<sup>417</sup> Another group of Victims, though smaller if compared with the previous group, remembers receiving information about their rights, but cannot remember the content of the information.<sup>418</sup> Victims in this group either express that *at that moment you do not remember anything*,<sup>419</sup> or that the information is available in *the paper* but there is no time to read it.<sup>420</sup>

Few Victims express knowing their rights after different interventions by the judicial system (e.g. first meetings with OFAVyT, OVD, or police station, or during mediation<sup>421</sup>). Furthermore, some Victims mention specific rights after being asked a second time. This group responds with the following specific right they think or assume they are entitled to: *a right to a house and to dignity*,<sup>422</sup> a right not to be yelled at on the streets and to work even without the permission of the accused,<sup>423</sup> *a right to be respected as a woman, a right not to be insulted or shouted at*,<sup>424</sup> a right not to be bothered;<sup>425</sup> a right to be free, to do what they want without receiving threats and insults; a right to a tranquil and good life;<sup>426</sup> and a right not to be hurt by the accused.<sup>427</sup>

Victims who were able to mention some rights were asked about how they came to know them. Other Victims, Legal Organizations, and TV shows are identified as sources of information.<sup>428</sup> The way journalists present domestic violence triggers, in some Victims, thoughts about the fact that it is not good that women are mistreated.<sup>429</sup> Some Victims learned from TV, by themselves<sup>430</sup> or through friends,<sup>431</sup> of the places to seek help and receive support.<sup>432</sup> The TV news covering tragedies related to domestic violence alert some Victims about what can potentially happen.<sup>433</sup>

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<sup>416</sup> V Male-I 1, 028; V-I 1, 038.

<sup>417</sup> V-I 1, 006.

<sup>418</sup> V-I 1, 025; V-I 1, 030; V-I 1, 015; V-I 1, 006.

<sup>419</sup> V-I 1, 030.

<sup>420</sup> V-I 1, 015.

<sup>421</sup> V-I 1, 003; V-I 1, 004.

<sup>422</sup> V-I 1, 007.

<sup>423</sup> V-I 1, 017.

<sup>424</sup> V-I 1, 010.

<sup>425</sup> V-I 1, 019.

<sup>426</sup> V-I 1, 021.

<sup>427</sup> V-I 1, 048.

<sup>428</sup> V-I 1, 009; V-I 1, 026.

<sup>429</sup> V-I 1, 013.

<sup>430</sup> Ibid.

<sup>431</sup> V-I 1, 026.

<sup>432</sup> Ibid.; V-I 1, 013.

<sup>433</sup> For examples of newspaper articles presenting domestic violence cases, see La Nación, “Femicidios”; Clarín, “Crimen del pozo ciego”; La Nación, “Denunció a su ex pareja al menos 12 veces y recién ahora consiguió una medida de protección”; La Nación, “Fue abusada durante nueve años por su padrastro, con la aprobación de su madre”; La Nación, “Junín”; Clarín, “Matan a una maestra jardinera frente a sus



Brochures are hardly mentioned, and Victims who received them cannot remember the information they made available.

#### 5.4.5.1. OVD

More than half of the Victims submitted their first complaints at the OVD. As mentioned in chapter 4, OVD is a Legal Organization meant to assist Victims since 2006. The OVD offers an entrance to the judicial system with a holistic approach to violence. It provides immediate preventive measures by drafting comprehensive reports to be used mainly by civil courts and the PPO. Most Victims who access through the OVD remember having the facts explained.<sup>434</sup> They recall the activities performed by providers: asking questions and taking notes. Most Victims perceive these activities as a sign of help, trust, order, and confidence that results in a feeling of tranquillity, support, company, or not feeling alone. One Victim, however, perceives that the repetitive questioning over one topic performed by the OVD was meant to make sure that she was telling the truth.<sup>435</sup>

Victims who perceive the activities of the OVD as a sign of help recognize an external actor with the capacity to assist, to give them immediate solutions, and suggestions on how to handle their problems.<sup>436</sup> The feeling of trust is triggered by the sequence of questions and steps that give them a sense of trust in a possible solution and reinforce their decisions to submit a complaint.<sup>437</sup>

The OVD, in the eyes of some Victims, translates problems into a structure with steps to follow.<sup>438</sup> The OVD is perceived by these Victims as an actor ordering their problems. For example, Victims perceive that the OVD instructs them to: (i) go to civil courts and to take restraining orders to the police station, (ii) find a lawyer to handle child support and visitation, and/or (iii) find a psychologist. A Victim explains that experiencing a provider ordering and structuring her problem gave her a feeling of confidence that she could do the same and gain control over the problem.<sup>439</sup> For other Victims the order and structure provided by providers is understood as though providers were *just getting the facts*<sup>440</sup> and that in the end *nothing happens*.<sup>441</sup> Victims who do not perceive their problems as domestic violence but as an addiction view the assistance to be unrelated and not meant to solve their problems. For example, a

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alumnos”; La Nación, “Monte Hermoso”; La Nación, “Paso a paso, cuáles fueron las instancias judiciales previas al asesinato de Claudia Schaefer.”

<sup>434</sup> V-I 1, 011; V-I 1, 013; V-I 1, 015; V-I 1, 022; V-I 1, 023; V-I 1, 025; V-I 1, 033; V-I 1, 037; V-I 1, 042; V-I 1, 046; V-I 2, 049; V-I 1, 052.

<sup>435</sup> V-I 1, 042.

<sup>436</sup> e.g. the possibility of placing the accused out of the house, the advice on working on communication skills, and hence being more confident about what they want, V-I 1, 015; V-I 1, 017; V-I 1, 026; V-I 1, 033; V-I 1, 037; V-I 1, 045; V-I 1, 052.

<sup>437</sup> V-I 1, 016.

<sup>438</sup> V-I 1, 011; V-I 1, 015; V-I 1, 023; V-I 1, 025; V-I 1, 026; V-I 1, 037; V-I 1, 038; V-I 1, 045; V-I 1, 046; V-I 2, 049; V-I 1, 052.

<sup>439</sup> V-I 1, 025.

<sup>440</sup> V-I 1, 042.

<sup>441</sup> V-I 1, 022.

Victim explains that she was given the option to submit a complaint on the threats, but she wanted help for the alcohol addiction of the accused.<sup>442</sup>

A Victim learned from the OVD that submitting a complaint might be used as a preventive strategy and states that the accused, after learning about the complaint, behaved in a calmer way.<sup>443</sup> In her words: *In 24 hours you leave a hyena* [i.e. when going to submit the complaint] *and you meet a Lassie* [i.e. when returning from submitting the complaint].<sup>444</sup> This serves as a preventive strategy every time the accused take complaints as a detriment that they want to avoid, and it is mentioned by some Victims to be a tool to control the behaviour, because *he knows what can happen if he repeats such an act*.<sup>445</sup> Some Victims recall specific rights transmitted verbally by the OVD. For example, the Victim who is a child recalls being told about her rights, and particularly becoming aware of her right to choose what to do *because this* [is her] *case* and not the case of her mother.<sup>446</sup>

The context also seems to be part of the process of rights awareness. Victims mention learning about the experiences of other Victims in the waiting room of OVD and feeling that they are not the only ones.<sup>447</sup> Some Victims who were receiving assistance (physiological or legal) before going to the OVD say they knew what to expect and did not feel surprised nor did they learn anything in particular.<sup>448</sup>

There was no distinction during interviews with regard to the profession of the providers who assisted Victims. When asked directly whether they recalled being attended by a multidisciplinary team, Victims remember being interviewed by two or three providers, but there is no sign that they paid attention to their professions.

#### 5.4.5.2. OFAVyT

Some Victims arrive at the PPO misinformed and with fear as to how the criminal justice system will perform in relation to them and to the accused.<sup>449</sup> Observation notes gathered during meetings by the Researcher allowed for the collection of further data on how much Victims understand where they are and what is happening in their legal procedures. As mentioned in previous chapters, many times Victims have at least a civil and a criminal case opened. It can be observed that many Victims do not understand what the PPO is, why they are there, and what is happening in the PPO if compared to what is happening in civil courts.<sup>450</sup> The confusion lies in the

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<sup>442</sup> V-I 1, 014.

<sup>443</sup> V-I 1, 026.

<sup>444</sup> Ibid. A similar expression is used by a mediator expressing how the accused changed during the mediation process, see chapter 4 of this study.

<sup>445</sup> Ibid.

<sup>446</sup> V-I 1, 052.

<sup>447</sup> V-I 1, 026.

<sup>448</sup> V-I 1, 030; V-I 2, 049.

<sup>449</sup> e.g. a Victim visits the PPO to withdraw the complaint because she fears that the police will come to get her at the hospital, while having surgery, for not complying with judicial requests, V-I 1, 002.

<sup>450</sup> Most Victims express not understanding the differences (V-IwSP, 007; V-IwSP, 003; V-IwSP, 013; V-I 1, 010; V-IwSP, 022; V-IwSP, 019; V-IwSP, 025; V-I 1, 036; V-IwSP, 014; V-I 1, 038; V-IwSP, 019; V-I 1,

implementation of restraining orders granted by the civil courts;<sup>451</sup> the need to have a lawyer for the civil legal procedure, but not for the criminal one;<sup>452</sup> the general misunderstanding of both justice procedures, followed by ensuring that in their eyes they are both the same;<sup>453</sup> the confusion about which complaint was submitted;<sup>454</sup> and what consequences each complaint brings.<sup>455</sup> After meetings with OFAVyT, some Victims leave with a very general understanding about the differences between their civil and criminal cases,<sup>456</sup> and between the police station and the PPO.<sup>457</sup> They understand, for example, that the civil court (i) is another place where they are going to try to solve their problems,<sup>458</sup> (ii) is the place where they need a lawyer,<sup>459</sup> (iii) is the place in charge of restraining orders,<sup>460</sup> and (iv) is the place in charge of their children.<sup>461</sup> Victims can also understand that the PPO (i) handles mediation,<sup>462</sup> (ii) deals with abuses,<sup>463</sup> (iii) calls for trial,<sup>464</sup> and (iv) incarcerates the accused.<sup>465</sup>

Some Victims were asked what they had learned from meetings with OFAVyT. This was done to capture the extent to which information received through multidisciplinary units is perceived by Victims in the short term. One Victim does not see any feasible proposed option to solve her problem,<sup>466</sup> while another Victim says that she did not understand her options because she was focused on a surgery that would take place the following week.<sup>467</sup> A group of Victims responds as understanding the options, but when probed to elaborate either they do not remember because they did not pay attention<sup>468</sup> or they fail to elaborate on the options. The group that fails to elaborate on the options ignores the probing and either repeats how the accused is recovering well from the addiction<sup>469</sup> or repeats the options given by OFAVyT without incorporating any judgment.<sup>470</sup> Victims who express understanding and

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045; V-I 2, 049; V-I 1, 043; V Male-I 2, 028); while others express understanding (V-I 1, 009; V-I 2, 049; V-I 1, 021).

<sup>451</sup> V-IwSP, 009.

<sup>452</sup> Ibid.

<sup>453</sup> V-I 1, 017; V-I 1, 013.

<sup>454</sup> e.g. a Victim thought she was there for the complaint that the other party submitted against her, and OFAVyT had to explain that she was there for a complaint she submitted. The Victim says: "No, he made the complaint." OFAVyT replied: "But this is one that you submitted." The Victim says: "Yes, because he was bothering me," V-IwSP, 029.

<sup>455</sup> V-I 1, 030; V-I 1, 054; V-I 1, 012; V-I 2, 045.

<sup>456</sup> V-I 1, 008; V-I 1, 030; V-I 1, 033; V-I 1, 037; V-I 2, 044.

<sup>457</sup> V-I 1, 051.

<sup>458</sup> V-I 1, 026.

<sup>459</sup> V-I 2, 012.

<sup>460</sup> V-I 1, 053.

<sup>461</sup> V-I 1, 008.

<sup>462</sup> V Male-I 1, 028; V-I 1, 053.

<sup>463</sup> V-I 1, 026.

<sup>464</sup> V-I 1, 008.

<sup>465</sup> V-I 2, 044.

<sup>466</sup> V-I 1, 001; V-I 1, 038.

<sup>467</sup> V-I 1, 002.

<sup>468</sup> V-I 1, 036.

<sup>469</sup> V-I 1, 014.

<sup>470</sup> V-I 1, 015; V-I 1, 037; V-I 1, 054.

elaborate on it explain that either their legal profession allows them to understand<sup>471</sup> or that a lawyer explained the options before the meetings.<sup>472</sup>

Victims who spoke about what they learned from meetings with OFAVyT or the prosecutor unit mention that the meetings with OFAVyT were helpful to continue with and to organize their lives,<sup>473</sup> and to know that they have the possibility to deal with their problems.<sup>474</sup> Some Victims who were referred recall being asked by the referred organizations about the facts and the first complaints.<sup>475</sup> Others recall being instructed on the steps to follow (e.g. transcribe text messages, attend mediation)<sup>476</sup> and on the options available (e.g. hire a lawyer and ask for an extension of restraining orders);<sup>477</sup> while others learned to hold out hope that the PPO would help and that they care.<sup>478</sup> Few Victims express their learning in terms of rights; and the one who did expresses learning that her rights need to be respected.<sup>479</sup>

Technical and legal terminology seem difficult to understand for Victims, mostly when prosecutors explain the consequences of legal actions (e.g. why they cannot perform mediation and decide for probation).<sup>480</sup> The risk of not understanding, besides the fact that Victims cannot participate in the decisions of their problems, is that it creates in Victims a feeling of uncertainty and detachment with their own complaints.

#### *5.4.5.3. Police Station*

A group of Victims was first assisted by the police station. Most of those Victims remember that during their meetings at the police station they were heard, asked questions,<sup>481</sup> and referred.<sup>482</sup> Some Victims describe those referrals as learning about the existence of other places available for help (e.g. OVD, PPO).<sup>483</sup> A Victim explains that when going to these places for the first time (i.e. police station or the PPO) there is not much to expect, and that what is needed is only to be ready and willing to answer what is asked.<sup>484</sup>

#### *5.4.5.4. Civil Courts*

Performing the actions demanded by civil courts can become a challenge for some Victims, mostly because they do not fully understand what they have to do and who is

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<sup>471</sup> V-I 1, 032.

<sup>472</sup> V-I 1, 003.

<sup>473</sup> V-I 1, 048.

<sup>474</sup> V-I 1, 006.

<sup>475</sup> V-I 1, 011; V-I 1, 032; V-I 1, 021.

<sup>476</sup> V-I 1, 021; V-I 1, 019.

<sup>477</sup> V-I 2, 049; V-I 1, 053.

<sup>478</sup> V-I 1, 015; V-I 1, 041.

<sup>479</sup> V-I 1, 039.

<sup>480</sup> V-I 2, 050.

<sup>481</sup> V-I 1, 021.

<sup>482</sup> Ibid.; V-I 1, 020, June 27, 2013; V-I 1, 024; V-I 1, 043.

<sup>483</sup> V-I 1, 024; V-I 1, 043; V-I 1, 005.

<sup>484</sup> V-I 1, 006.

in control of ensuring that actions are being performed correctly.<sup>485</sup> In domestic violence cases, civil courts are mostly associated to the first actions Victims have to take after submitting complaints: picking up the restraining orders to bring to the police station to notify the accused.

A Victim recalls learning from the civil judge who, while reading her complaint, told her: *Not even an animal is treated like this*.<sup>486</sup> This comment made her think, for the first time, about what she had been tolerating.<sup>487</sup> Another Victim, who experiences the pro bono services in court, feels very happy because the attorney *is constantly calling [her] to inform her if there is a notification, if a hearing has been scheduled*.<sup>488</sup> It is perceived again that Victims experience trust when there is someone responsive and with knowledge in control of their problems.

The moment of delivery of assistance needs to be balanced. Victims do not understand why they are asked questions, though they recall being asked. Therefore, it may be strategically beneficial for providers to explain why questions are being asked in order for Victims to understand that this “interrogation” has a purpose for their complaints. The options that become available after Victims reach the first access points and the actions that need to be taken by them also need to be clearly expressed so as to reduce expectations and increase the understanding of Victims on their role in the process of rights awareness. Clarity in information and follow-up calls are understood by Victims as actions of caring. Regardless of the positive or negative relation with the access points, with the exception of two negative referrals to the police station, no Victim perceives that Legal Organizations or the law could harm them.

#### 5.4.6. Understanding Rights during Second Interviews

In first interviews Victims value tranquillity, while in second interviews Victims value liberty,<sup>489</sup> respect,<sup>490</sup> happiness,<sup>491</sup> and tranquillity.<sup>492</sup> Victims were also asked during second interviews what rights they think they deserved. Some Victims consider respect,<sup>493</sup> happiness,<sup>494</sup> freedom,<sup>495</sup> and the right to submit complaints;<sup>496</sup> while others consider the right to have control over different aspects of their lives (e.g. have a house, intimacy, employment, decide who to live with, live in harmony, being respected and to respect, freely walking on the streets)<sup>497</sup> or of their complaints (e.g.

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<sup>485</sup> V-I 1, 053.

<sup>486</sup> V-I 1, 013.

<sup>487</sup> Ibid.

<sup>488</sup> V-I 1, 037.

<sup>489</sup> V-I 2, 037; V-I 2, 051; V-I 2, 023.

<sup>490</sup> V-I 2, 006; V-I 2, 026; V-I 2, 035; V-I 2, 031; V-I 2, 051; V-I 2, 023.

<sup>491</sup> V-I 2, 027.

<sup>492</sup> V-I 2, 006; V-I 2, 038; V-I 2, 050.

<sup>493</sup> V-I 2, 006; V-I 2, 026.

<sup>494</sup> V-I 2, 027.

<sup>495</sup> V-I 2, 037.

<sup>496</sup> V-I 2, 033.

<sup>497</sup> V-I 2, 007; V-I 2, 023; V-I 2, 050; V-I 2, 037.

right to submit the complaint).<sup>498</sup> The response by the judicial system to the complaints reassures some Victims that they deserve the right they claim.<sup>499</sup> The Victim who is a child explains that she deserves a right to be heard more often because she feels her mother is the one that is heard most of the time during the legal procedure.<sup>500</sup> Another Victim explains that she thinks she deserves the right to receive a faster response from the judicial system.<sup>501</sup>

Victims were asked during second interviews whether they could understand what their rights were. Nine Victims do not know.<sup>502</sup> Victims in that group state either that they do not know their rights or ever thought about them,<sup>503</sup> or that they could not remember their rights and do not have time to get into them now, considering it more important to spend time with psychologists and performing personal activities.<sup>504</sup> One Victim repeats that her problem is not related to violence but to the addiction of her partner and that she would not know where to go to seek help for this problem.<sup>505</sup> Another Victim states that she understands “more or less” what her rights are;<sup>506</sup> while the remaining Victims respond that they understand.<sup>507</sup> Victims in this last group understand that they have a right to be helped and to receive options from the judicial system to solve their problems<sup>508</sup> and a right to request the accused be treated with respect and to have an equal role in the relationship.<sup>509</sup> Other Victims relate their rights to the fact of being heard and express what they want as a result of their complaints.<sup>510</sup> Some Victims who solved their problems by the time of second interviews state that they do not think about their complaints anymore.<sup>511</sup> The only Victim who recalls specific rights and who recalls her different options along the legal

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<sup>498</sup> V-I 2, 014.

<sup>499</sup> V-I 2, 038; V-I 2, 045.

<sup>500</sup> V-I 2, 052.

<sup>501</sup> V-I 2, 053.

<sup>502</sup> V-I 1, 001; V-I 2, 003; V-I 2, 006; V-I 2, 019; V-I 2, 038; V-I 2, 041; V-I 2, 045; V-I 2, 054; V-I 2, 014.

<sup>503</sup> V-I 2, 003; V-I 2, 006; V-I 2, 019; V-I 2, 038; V-I 2, 041; V-I 2, 054.

<sup>504</sup> V-I 2, 001; V-I 2, 045.

<sup>505</sup> V-I 2, 014.

<sup>506</sup> V-I 2, 007.

<sup>507</sup> V-I 2, 012; V-I 2, 024; V-I 2, 017; V-I 2, 026; V-I 2, 027; V Male-I 2, 028; V-I 2, 031; V-I 2, 033; V-I 2, 034; V-I 2, 035; V-I 2, 037; V-I 2, 039; V-I 2, 043; V-I 2, 047; V-I 2, 050; V-I 2, 051; V-I 2, 052; V-I 2, 053.

<sup>508</sup> A Victim expresses that she has a right to have rights and that the judicial system is there to help her, V-I 2, 012; another expresses learning about the resources available to help her (e.g. panic bottom), V-I 2, 017; a different Victim expresses learning the steps she needs to follow with the civil and criminal justice systems and what type of help to expect from each justice system, V-I 2, 026; a Victim understands that she can decide whether to testify or not because she is doing this case for herself, V-I 2, 027; another understands that providers help him by active listening, V Male-I 2, 028; a different Victim understands that she has a right to be involved in her case and to ask for help throughout the legal proceedings, V-I 2, 050; while another understands that the judicial system provides limits to the accused which need to be respected, V-I 2, 035. A Victim is aware that there are places to go and ask for help, V-I 2, 039; a different Victim recognizes her right to be assisted and protected, V-I 2, 033; another Victim learns that she has an option to have a case against the accused, V-I 2, 037; and finally, another Victim explains that she was given options to decide which paths to follow, V-I 2, 034.

<sup>509</sup> V-I 2, 012; V-I 2, 026; V-I 2, 039; V-I 2, 050; V-I 2, 051; V-I 2, 052; V-I 2, 037; V-I 2, 031.

<sup>510</sup> V-I 2, 024.

<sup>511</sup> V-I 2, 047.

procedure states that she did individual research using her computer and had extensive talks on the topic with her mother.<sup>512</sup> Another Victim who was involved in monthly meetings with the judicial system to assess the well-being of her children literally recalls the rights of her children.<sup>513</sup> It can therefore be deduced that persistent contact with the information can stimulate the process of rights awareness.

Victims were asked their opinion on their rights and most of them perceive these as something that is out there to be “hunted.” Some Victims develop the idea in a logical way by stating that being a citizen gives rights, the possibility of being protected and heard, ending in the right to receive a solution.<sup>514</sup> Other Victims distinguish between written rights *for women*<sup>515</sup> and the possibility to enforce them,<sup>516</sup> though recognize that the purpose of rights lies in the enforcement.<sup>517</sup> Only one Victim proceeds logically from a subject perspective: first there is a need for self-respect, afterwards come the rights.<sup>518</sup>

Rights can be perceived as standards or values that unite communities because they are common to all human beings.<sup>519</sup> They are latent standards that can get activated. Some Victims consider that there is a need to speak out about rights when something wrong happens.<sup>520</sup> Rights awareness seems to be a process that does not always escalate. For example, a Victim was asked a follow-up question on an answer from the first interview where she mentioned feeling more confident after knowing her rights. When asked again after six months, she said that by the time of the first interview everything was fresh in her mind, but that with time she forgot and now she cannot follow the legal procedure because it is very time-consuming.<sup>521</sup>

#### 5.4.7. Cultural Components

A brief analysis was made comparing nationalities with the way Victims talk about their rights. The data shows, even when results cannot be conclusive, that Victims born in the City and in the province of Buenos Aires articulate their answers in concrete terms of having a right to something, such as to have *intimacy, a house, a job*;<sup>522</sup> *to freely walk on the street, to be free of fear, to be tranquil*;<sup>523</sup> *to be respected, to be free*;<sup>524</sup> *to be heard, to give a father to their child*;<sup>525</sup> *to be assisted and protected*;<sup>526</sup> and *to be free, to have*

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<sup>512</sup> V-I 2, 034.

<sup>513</sup> V-I 2, 037.

<sup>514</sup> V-I 2, 006.

<sup>515</sup> V-I 2, 027; V-I 2, 053.

<sup>516</sup> V-I 2, 007.

<sup>517</sup> V-I 2, 037.

<sup>518</sup> V-I 2, 051.

<sup>519</sup> e.g. 2 Victims express they know they had rights just like any other human being, V-I 2, 043; V-I 2, 031.

<sup>520</sup> V-I 2, 051; V-I 2, 052.

<sup>521</sup> V-I 2, 045.

<sup>522</sup> V-I 2, 007.

<sup>523</sup> V-I 2, 050.

<sup>524</sup> V-I 2, 051.

<sup>525</sup> V-I 2, 052.

<sup>526</sup> V-I 2, 033.

*friends, to communicate.*<sup>527</sup> Some Victims from Bolivia express learning that they have a right not to be insulted,<sup>528</sup> humiliated,<sup>529</sup> or beaten;<sup>530</sup> and the Victim born in Chile recognizes having the rights of a human being.<sup>531</sup> Victims born in the provinces of Entre Ríos and Jujuy state not knowing and not having had their rights explained.<sup>532</sup> Victims born and experiencing their childhood in Colombia, Paraguay, and Peru vaguely mention that they think they have rights<sup>533</sup> and one remembers receiving *a paper* with her rights.<sup>534</sup> The Victim in the sample who lives in the household with the highest income fears for the lack of economic assistance by the accused and for her capacity to continue paying the lawyer. She is unaware of her pro bono options.<sup>535</sup>

There is also a clear distinction between lessons learned by the population from Bolivia, when compared to those from other countries. Five out of the seven Victims from Bolivia mention as a main take away from the first encounter with an access point learning that women do not have to be abused by anybody.<sup>536</sup> Yet, even when Victims from Bolivia were surprised to know that they have a right not to be abused, they also phrase their answers in terms of rights and in terms of a normative authority, which is not perceived by Victims from other countries. For example, one Victim explains that she learned that *in this country* [i.e. Argentina] *women cannot be beaten* and that *men are not here to beat*.<sup>537</sup> Knowing this makes Victims feel supported and accompanied, yet they recognize that taking the decision to leave the accused is still difficult.<sup>538</sup> Most Victims born in Bolivia who accessed the PPO obtained primary education, with the exception of one who did not obtain education at all and another who finished secondary school. The starting point of rights awareness for this population is considered almost non-existent by the time they reach the first access points. The remaining Victims did not ignore that an abusive relationship is not expected, even when some realized after reaching an access point that they had tolerated abuse for too long.<sup>539</sup>

Further studies are needed, yet the current sample offers hints on the importance of the cultural component in the process of rights awareness. This aspect is important for public policy, because in places like the City, many times immigrant populations gather together in neighbourhoods. Hence, tailor-made policies can be locally implemented to increase rights awareness.

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<sup>527</sup> V-I 2, 037.

<sup>528</sup> V-I 1, 010.

<sup>529</sup> V-I 2, 012.

<sup>530</sup> V-I 1, 012.

<sup>531</sup> V-I 2, 031.

<sup>532</sup> V-I 1, 008; V-I 2, 047.

<sup>533</sup> V-I 1, 006; V-I 2, 034; V-I 1, 023.

<sup>534</sup> V-I 1, 015.

<sup>535</sup> V-I 2, 049.

<sup>536</sup> V-I 1, 012; V-I 1, 044; V-I 1, 013; V-I 1, 010; V-I 1, 016.

<sup>537</sup> V-I 1, 012.

<sup>538</sup> Ibid.

<sup>539</sup> Ibid.



### 5.4.8. The Media

The media, mostly TV shows, is mentioned as a powerful resource of rights awareness when broadcasting stories of other Victims. This has two sides: on the one hand, it helps to create awareness of what can happen if the violence stops, and, on the other hand, it helps to create awareness of what can be done to stop the violence. Therefore, it is important that the media clearly communicates about resources available. TV shows also act as providers of information, and when information is partial, Victims might submit a complaint expecting that their complaint will take the same path as those that appeared on TV.<sup>540</sup> The risk of being misinformed or ignorant of the legal procedure may create wrong expectations and a risk in the enforcement of rights. For example, a Victim believed that her criminal complaint would result in an automatic jail sentence, as seen on TV.<sup>541</sup> Another Victim explains that, due to being misinformed, she missed a hearing, because she went late with the hope of not meeting the accused. Only after she missed this occasion was it explained to her by the Comprehensive Centres for Women that she could have asked for a hearing in separate rooms or for support.<sup>542</sup>

### 5.4.9. Social Network

The social rejection of violence expressed by the media also shows itself to be part of the process of rights awareness. The social network of Victims is also perceived as a transmitter of media information, legal information, and personal experiences. For example, a Victim explains that she learned from her daughter that in Bolivia there were also demonstrations made by women requesting jail sentences for men who perform acts of physical violence.<sup>543</sup> Another Victim explains that her sister is a lawyer and explained her rights to her, though she still cannot recall them.<sup>544</sup> A different Victim mentions that nothing specifically surprised her about the meetings with OVD and OFAVyT because two friends experienced a similar situation and shared with her the steps they followed and how they felt.<sup>545</sup> Victims who received information via their social network are perceived more confident towards the legal procedure. As explained by a Victim speaking about how her conversation with the ex-girlfriend of the accused reaffirmed her in the decision to submit the complaint,

*I cannot do this alone. I need a battalion of people behind me to help me, because one alone cannot do it. And the ex-girlfriend [of the accused] told me that I was right, that the only way to end a relationship with him was through this way [i.e. referring to the complaint], right? Not by talking.<sup>546</sup>*

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<sup>540</sup> V-I 1, 054; V-I 1, 013.

<sup>541</sup> V-I 1, 013.

<sup>542</sup> V-I 1, 045.

<sup>543</sup> V-I 1, 013.

<sup>544</sup> V-I 1, 017.

<sup>545</sup> V-I 1, 015.

<sup>546</sup> V-I 1, 050.

The waiting room of OVD seems to be another powerful tool of rights awareness. Victims seem to acquire a sense of belonging to a group and awareness of support. This could be deemed as social rights awareness nourished by the actions of others.

#### 5.4.10. Rights Awareness as a Process

Rights awareness is perceived as a process experienced by Victims. Multiple stimuli with information and messages (e.g. family, psychologists, Legal Organizations, TV, waiting rooms) seem to contribute to the decision to submit complaints. Domestic violence situations that gain TV attention, the reception of information from judges, the service by the PPO and OVD all help trigger reflection on the part of Victims about the fact that some things cannot continue to be accepted.<sup>547</sup> This process seems to be lived in private by Victims without giving signs to the accused. A Victim explains that the accused was confused and surprised when he learned about the complaint and could not understand why other times the Victim accepted the violence but not the abuse that triggered the complaint.<sup>548</sup>

##### 5.4.10.1. Before Submission of Complaints

Being aware of rights is not directly associated with action. As mentioned before, rights awareness is a process; and for some Victims it takes years before they decide to submit complaints, sustain them, and give an end to abusive relationships. A Victim explains that in her head she wants to be free and live a tranquil life with her children, though *this time* she decides to give him another chance, drop the complaint, and be more determinant if he continues *misbehaving*.<sup>549</sup>

Previous exposure to information about domestic violence is also recalled in the answers of Victims. A Victim recalls hearing about domestic violence almost seven years before she experienced it herself, when she participated in some meetings organized by her sister and friends to talk about gender violence.<sup>550</sup> A different Victim expresses learning about the existence of OVD in a seminar *some years ago* and during a visit to the hospital after being physically abused, though on both occasions the Victim ignored the tool even when recalling its existence.<sup>551</sup> Another Victim explains that a friend told her one year before she submitted the complaint about information she saw on TV on what to do when experiencing domestic violence.<sup>552</sup> Experiences shared by other Victims and the actions they took to overcome the situations offer other exposure to information prior to submission of complaints. Victims recall the action taken and how those Victims expressed feeling after the submission of their complaints: tranquillity and calmness.<sup>553</sup>

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<sup>547</sup> V-I 1, 017; V-I 1, 013.

<sup>548</sup> V-I 1, 013.

<sup>549</sup> V-I 1, 012.

<sup>550</sup> V-I 1, 017.

<sup>551</sup> V-I 1, 048.

<sup>552</sup> V-I 1, 026.

<sup>553</sup> V-I 1, 017.

Life experiences also play a role. For example, a Victim recalls hearing of the existence of a lawyer who could help her *some time ago* in an elevator located in the building where her lawyer had an office.<sup>554</sup> Another Victim had her rights explained to her *for around 10 minutes* at the civil court when she was granted divorce.<sup>555</sup> Previous experiences with the judicial system are mentioned as increasing the feeling of owning responsibility in the search for a solution.<sup>556</sup>

Victims were asked whether they had the opportunity to share the information they received with other women facing domestic violence and, as previously mentioned, in most cases they answered positively. Therefore, informing people of their options available to seek help has a snowball effect, even when people do not understand the legality of their acts.

#### *5.4.10.2. During the Process*

Access to organizations seems to help Victims to remember and to learn where they are positioned in their problems. Some Victims start to become aware of their capacity to embrace their problems, instead of simply accepting them. The reassurance from providers by manifesting an acceptance and support of the actions of Victims to submit complaints is perceived as part of the process of rights awareness experienced by Victims. In this process, Victims realize that they have a socially accepted option that can be used to overcome their problems. It gives them awareness of the role they can play towards change. Referrals made by OVD and OFAVyT to psychologists are perceived by some Victims as an important tool to learn to handle problems.<sup>557</sup>

The process of rights awareness seems to have no clear beginning and end, and that is why this study considers it a process rather than a component within a cycle. Victims recall information received years ago (at least within seven years from this sample) even if at that time domestic violence was not a problem for them.<sup>558</sup> Therefore, the sample gives some hints to believe that efforts towards rights awareness can have an impact in the short term and in the long term. Moreover, the repetition of legal information provided to Victims seems to be beneficial for the process of reassurance of their decision to submit complaints.

### **5.5. Rights Enablement**

Rights enablement is pursued by ensuring that Victims gain options to overcome obstacles to access to justice.<sup>559</sup> This sub-section therefore starts by analysing the resources Victims use to obtain access to organizations (5.5.1.). Resources are first viewed as the means that provide Victims with information about where to submit complaints. Organizations, social network, and media are some of the resources

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<sup>554</sup> V-I 1, 008.

<sup>555</sup> V-I 1, 005.

<sup>556</sup> Ibid.

<sup>557</sup> V-I 1, 030.

<sup>558</sup> e.g. V-I 1, 017.

<sup>559</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 11.

included. Further, this sub-section analyses the elements Victims consider when choosing resources (5.5.2.) and how Victims perceive those resources as helpful in assisting them with their problems (5.5.3.). In addition, this sub-section analyses the elements Victims highlight from their experience with resources (5.5.4.), the legal procedure (5.5.5.), and the main consequences of their use (5.5.6.). Lastly, the obstacles encountered by Victims (5.5.7.) together with their perceptions of the effects of complaints on the behaviour of the accused are considered as important elements to enable the use of rights (5.5.8.).

### 5.5.1. Resources to Access State Organizations

The motivation of Victims to act and to start their legal procedure was previously analysed in this study (5.3.2.). This sub-division focuses on the resources Victims use to obtain access to state organizations. Questionnaires show some inconsistency in the answers received about the paths followed by Victims to obtain access to state organizations. A question on how Victims knew of the existence of OFAVyT seems to have been treated, on some occasions, as equal to a question on how Victims knew of the available resources. As a result of this, Victims were asked during first interviews how they knew about the state organizations they approach to seek help, using their answers on the questionnaires as a point of departure.

The police station is confirmed as the state organization where most Victims start seeking help.<sup>560</sup> Some Victims explain that this is because police stations are the place to go due to the role police officers have to protect and provide security.<sup>561</sup> Physical proximity and previous relations with police stations are mentioned by Victims,<sup>562</sup> together with the recommendation by psychologists, friends, or family members to approach them.<sup>563</sup> Police stations refer Victims to either the OVD<sup>564</sup> or civil courts,<sup>565</sup> or receive criminal complaints and send them to the PPO.<sup>566</sup> The Victims who are referred to civil courts are then referred by civil courts to the OVD.<sup>567</sup> Therefore, one referral of the chain could have been avoided. The three Victims whose complaints were sent by the police station to the PPO mention that they were called to a meeting by the prosecutor unit or by OFAVyT. Victims who went first to the OVD and then to the PPO, also mention that they were called by the prosecutor unit or by OFAVyT. A Victim explains that the police officer sent the complaint to the PPO and provided her with the address to the OVD. She started with the case at the PPO because she *was called by OFAVyT before going to OVD*.<sup>568</sup> Victims whose issues were not “typical domestic violence cases” had to work harder before finding a state organization that

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<sup>560</sup> V-I 1, 005; V-I 1, 001; V-I 1, 006; V-I 1, 009; V-I 1, 010; V-I 1, 011; V-I 1, 013; V-I 1, 014; V-I 1, 012; V-I 1, 017; V-I 1, 021; V-I 1, 022; V-I 1, 027; V Male-Q, 028.

<sup>561</sup> V-I 1, 012; V-I 1, 017; V-I 1, 006; V-I 1, 010; V-I 1, 005.

<sup>562</sup> V-I 1, 006; V-I 1, 010; V-I 1, 005; V-I 1, 022; V-I 1, 021.

<sup>563</sup> V-I 1, 002; V Male-I 1, 028; V-I 1, 013.

<sup>564</sup> V-I 1, 006; V-I 1, 009; V-I 1, 001; V-I 1, 012; V-I 1, 013; V-I 1, 017.

<sup>565</sup> V-I 1, 014; V-I 1, 002.

<sup>566</sup> V-I 1, 001; V-I 1, 005; V-I 1, 021; V Male-I 1, 028.

<sup>567</sup> V-I 1, 014; V-I 1, 002.

<sup>568</sup> V-I 1, 006.

would take their complaints. This was the situation faced by two Victims who wanted their partners to be obliged to start treatment for alcohol addiction<sup>569</sup> and for a Victim seeking child support.<sup>570</sup> Both Victims dealing with alcohol addiction of the accused wanted to file away their complaints after realizing the type of intervention demanded on their side and perceiving the lack of effect complaints have on alcohol addiction.

Victims who are referred by police stations to the OVD or civil courts<sup>571</sup> were given the address where they should appear, demanding another level of LE. Victims whose complaints were automatically sent by the police station to the PPO appeared at the PPO because they were called.<sup>572</sup> This study, however, cannot account for Victims who presented themselves at police stations but who got lost in their paths to state organizations after first referrals.

A group of Victims began on paths to state organizations through social networks, either through friends<sup>573</sup> or family members,<sup>574</sup> who told them to approach the OVD, police stations, Alcoholics Anonymous, or to call lines 911 or 137.<sup>575</sup> In all situations, they jointly performed this first approach or call. The media appears as a resource that provides awareness of the existence of other resources (e.g. OVD,<sup>576</sup> Alcoholics Anonymous<sup>577</sup>) and of telephone numbers available to seek help (e.g. line 137).<sup>578</sup> Victims with a lawyer to consult about where to start seeking help are an exception, however.<sup>579</sup>

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<sup>569</sup> A Victim mentions that she went to the police, from there to the civil court, and from there to the OVD, then once again to the civil court and finally back to OVD. At OVD she was informed that the only thing they could do was to help her with a complaint for the threats, and she accepted. After the complaint was submitted, she realized that this was not her intention, and ended up working with a provider from the health insurance section, V-I 1, 014; another Victim explains that she first visited her sister-in-law, then she checked on the Internet (with the help of her nephew and sister-in-law), from there they found Alcoholics Anonymous, and then went there. At Alcoholics Anonymous she was referred to OVD, and from OVD to a psychologist. Most probably the psychologist was from the CIM, because the Victim explains that the psychologist told her to speak with a lawyer from the same organization to represent her (after she learned that the accused had hired a lawyer). This Victim explains that she had experienced violence in the past, and in those experiences she went to the police, V-I 1, 016.

<sup>570</sup> A Victim with a child support civil case, started with a civil mediation and the representation of a lawyer. After an unsuccessful mediation, the lawyer suggested submitting a criminal complaint based on economic violence, V-I 1, 003.

<sup>571</sup> These referrals are mostly made in situations that require the intervention of the civil justice system.

<sup>572</sup> These referrals are mostly made in situations that require the intervention of the criminal justice system.

<sup>573</sup> V-I 1, 025; V-I 1, 026; V-I 1, 027.

<sup>574</sup> V-I 1, 023; V-I 1, 024; V-I 1, 016.

<sup>575</sup> Line 137 is a toll-free telephone number to assist Victims, see Ministerio de Justicia y Derechos Humanos, "Línea 137 de Atención a Las Víctimas."

<sup>576</sup> A Victim states that, even when a friend told her about the existence of OVD after seeing the number on TV, they both decided to go to the police station to confirm the information. Only after the police confirmed did she go to the OVD, V-I 1, 026.

<sup>577</sup> The Victim was with her sister-in-law, and her nephew assisted with the Internet search, V-I 1, 016.

<sup>578</sup> V-I 1, 027.

<sup>579</sup> One Victim started by calling her lawyer, and was advised to submit a complaint at OVD, V-I 1, 019.

Two Victims started their paths to state organizations by approaching the access points of the PPO located in the emergency neighbourhoods.<sup>580</sup> In one instance, the complaint was received and further on OFAVyT called her to meet.<sup>581</sup> In another instance, the access point advised her to go to the OVD. The Victim did so, and submitted a complaint which was then sent by the OVD to the PPO to handle the criminal aspect. Another Victim expresses submitting the complaint directly at the OVD and then receiving a call from the PPO.<sup>582</sup> As mentioned in the rights awareness section, it is not surprising that Victims understand the call of the PPO as a stage of the legal procedure they started at OVD.

It was difficult to recapitulate in almost all interviews the paths Victims followed to state organizations, and there was significant probing for that purpose. This is a sign of the complexity of the paths to state organizations in domestic violence, where Victims, as mentioned in chapters 3 and 4, can submit their complaints at, for example, police stations, courts, OVD, and PPO. Another element is that most Victims who sustain their legal procedures follow the directions given by providers,<sup>583</sup> and hence it is possible to sense the social responsibility of those who perform referrals.

Few Victims take security precautions after the non-responsiveness of the state organizations they visited. For example, a Victim decides to move to a location unknown to the accused after repeated calls to police emergency line 911 without a successful outcome (i.e. *They never came*).<sup>584</sup> Another Victim continues with complaints though also decided to move to another location after perceiving the lack of an efficient response by state organizations.<sup>585</sup>

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<sup>580</sup> V-I 1, 015; V-I 1, 003.

<sup>581</sup> V-I 1, 003.

<sup>582</sup> Ibid.

<sup>583</sup> e.g. a Victim explains that her previous experience did not help her in the new case, and that she mostly does what the lawyer tells her to do, *ibid.*; another Victim explains that the lawyer calls her after appointments with the psychologist to give her directions about how to continue, V-I 1, 017; two other Victims express always going to the places they are told to go to, V-I 1, 013; V-IwSP, 022; V-I 1, 022; another Victim explains that first a mobile unit came and talked to her, and then the cousin took her to OVD, V-I 1, 025; while a different Victim submitted the complaint because the partner told him to do so, and then waited for a call from the PPO. However, after some time passed without receiving a call, he decided to go and check what was going on, V Male-I 1, 028.

<sup>584</sup> V-I 1, 025.

<sup>585</sup> V-I 1, 001.

### 5.5.2. Choosing Resources



Figure 5. Choosing Resources

The police station, lawyers, OVD, psychologists, and friends are the resources most frequently mentioned as being used by Victims. The PPO and OFAVyT are not mentioned as frequently as the former, and this can be explained by the fact that interviews took place in their location.

It is uncommon to hear Victims express the idea that starting a legal procedure came from themselves. In most cases someone suggested Victims seek legal assistance. Suggestions most of the time came from,

- Psychologists,<sup>586</sup> CIM,<sup>587</sup> line 911,<sup>588</sup> and friends and/or family members<sup>589</sup> suggesting submitting complaints.
- Lawyers<sup>590</sup> and police officers<sup>591</sup> suggesting submitting civil complaints.
- Colleagues with experience in legal procedures suggesting submitting criminal complaints.<sup>592</sup>
- Friends suggesting calling lawyers.<sup>593</sup>
- Friends suggesting psychological therapy.<sup>594</sup>
- Police officers suggesting going to OVD.<sup>595</sup>
- OFAVyT and/or OVD suggesting psychological therapies.<sup>596</sup>

Other Victims find options together with a family member or friend. For example, a Victim searched with her sister-in-law for an alternative for help;<sup>597</sup> while other Victims went with their sisters, sisters-in-law, or female neighbours to the police station and then to OVD.<sup>598</sup> Only one Victim looked for a lawyer in the Yellow Pages

<sup>586</sup> V-I 1, 002.

<sup>587</sup> V-I 1, 012.

<sup>588</sup> V-I 1, 024.

<sup>589</sup> A friend (V-I 1, 008; V-I 1, 010; and V-I 1, 025); the cousin and other family members (V-I 1, 021); and the father (V-I 1, 024).

<sup>590</sup> Private lawyers (V-I 1, 003; V-I 1, 004; V-I 1, 030; V-I 1, 037); and pro bono lawyers (V-I 1, 007; V-I 1, 016).

<sup>591</sup> V-I 1, 014.

<sup>592</sup> V-I 1, 001.

<sup>593</sup> V-I 1, 030; V-I 1, 037.

<sup>594</sup> V-I 1, 013.

<sup>595</sup> V-I 1, 011.

<sup>596</sup> V-I 1, 017; V-I 1, 027.

<sup>597</sup> V-I 1, 016.

<sup>598</sup> V-I 1, 017; V-I 1, 009; V-I 1, 011; V-I 1, 022; V-I 1, 027.

to seek guidance on where to start,<sup>599</sup> and few Victims resorted to resources without recommendations. In the last scenario, Victims approached those resources that were close to their residence and that were familiar to them. For example, a Victim approached a police officer because he was always standing in front of her house,<sup>600</sup> and another Victim approached the PPO in her neighbourhood because everyone who has a problem approaches this Legal Organization.<sup>601</sup> Finally, a different Victim went to a police station because in the neighbourhood there are many cases of abuse and friends go to that police station.<sup>602</sup> As explained by this Victim:

*Interviewer: And why did you go to this place first?*

*Interviewee: Because I did not know where to go.*

*Interviewer: And did you try any other places before?*

*Interviewee: No, I did not try any.*

*Interviewer: And did someone recommend you go to that place?*

*Interviewee: What happens is that for everything that happens in the neighbourhood, everyone goes there.*

*Interviewer: Ah, okay.*

*Interviewee: You see? And they advise you, well, you got to go to this place, no matter what it is about, or in any matter. Not only for family problems.<sup>603</sup>*

All Victims who shared their problems with their social network before taking action had shared their problems with and had followed the suggestions of a female (e.g. sisters, sisters-in-law, female neighbours).<sup>604</sup> Only two Victims mention sharing their problems and following the advice of a male, which in both cases were their fathers.<sup>605</sup> There is hardly any reference to the gender of the provider who received Victims at the access points, with the exception of one Victim who felt judged by a male police officer.<sup>606</sup>

### 5.5.3. Characteristics of Resources

Victims follow advice, referrals, or their own intuition when choosing resources. The OVD and the PPO are, in most cases, resources that derive from a referral. Police stations, lawyers, and psychologists are resources that derive mostly from recommendations. This sub-division analyses what characteristics Victims recall of their experience with different resources.

#### 5.5.3.1. Police Station

Interviews indicate that police stations are seen in the social consciousness as the place to go, and Victims show themselves to have difficulties memorizing the names or

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<sup>599</sup> V-I 1, 026.

<sup>600</sup> Ibid.

<sup>601</sup> V-I 1, 015.

<sup>602</sup> V-I 1, 004.

<sup>603</sup> V-I 1, 015.

<sup>604</sup> V-I 1, 016; V-I 1, 017; V-I 1, 009; V-I 1, 011; V-I 1, 022; V-I 1, 027.

<sup>605</sup> V-I 1, 023; V-I 1, 007.

<sup>606</sup> V-I 1, 041.



contact information of the other places available to submit complaints or assistance. A Victim explains, while talking about her decision to go to the police station:

*Interviewer: And did you happen to go to another place before?*

*Interviewee: No, I thought directly about submitting the complaint at the police station.*

*Interviewer: And why was that?*

*Interviewee: Because it is where complaints are received.*

*Interviewer: Okay. And, where did you learn that? From experience? Or someone told you?*

*Interviewee: That is the way it is. That is to say, at the police station is where complaints are received [laughs].*

*Interviewer: Okay.*

*Interviewee: And if not, I would have been better informed [at the police].*

*Interviewer: About where to go.*

*Interviewee: Of course [laughs].<sup>607</sup>*

Even in cases where Victims are not happy with the assistance received at police stations, and know of other available options, when asked where they will seek help if another event occurs, the answer many times is: *The police*.<sup>608</sup>

The reasons mentioned by Victims as to why they selected the police station as the access point are related to the following factors: (i) police stations, they are the immediate helper and the place where complaints are received;<sup>609</sup> (ii) location of police stations in neighbourhoods and the fact that Victims know where they are located;<sup>610</sup> and (iii) police stations, they are neutral organizations without adding an emotional element. A Victim explains,

*... because with these things it is like saying, 'This will never happen [to me]' until it happens. And when it happens, you say, 'Where should I go?' Because it is not easy to share it [with others]. But, you have to do something, as a parent you have to react. Then, when you are more calmed, you are in the position to share it with someone, with the one you know better [and] they tell you, 'Yes, because the same happened to a friend of mine, and she did ...' <sup>611</sup>*

Line 911<sup>612</sup> is used by Victims to handle emergencies. In two situations police officers responded to calls,<sup>613</sup> while in another they did not.<sup>614</sup> It is not clear what factors influenced the non-responsiveness of the police officers in the last case.

The Victim who mentions seeking assistance at the access point of the PPO explains that in her neighbourhood the police station is not an alternative because it does not

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<sup>607</sup> V-I 1, 022.

<sup>608</sup> e.g. V-I 1, 024.

<sup>609</sup> V-I 1, 012; V-I 1, 014; V-I 1, 021; V-I 1, 022; V-I 1, 024; V-I 1, 036; V-I 1, 050.

<sup>610</sup> e.g. because they previously had to do other administrative paperwork there, V-I 1, 005; V-I 1, 026.

<sup>611</sup> V-I 1, 041.

<sup>612</sup> Policía Federal Argentina, "Línea 911."

<sup>613</sup> V-I 1, 030; V-I 1, 013.

<sup>614</sup> V-I 1, 025.

provide effective options, there are people waiting, and wrong referrals are made.<sup>615</sup> The factors are determinant for the selection of other resources.<sup>616</sup> Another Victim explains that, if needed, she would go to the OVD but not to the police station because she heard from many women that police stations are not good places to submit complaints on domestic violence.<sup>617</sup> Nevertheless, police stations are still considered the main referral for help, yet other Legal Organizations are gaining popularity (e.g. the OVD and PPO units in emergency neighbourhoods).

### 5.5.3.2. *Lawyers*

Lawyers seem to have a stable presence amongst inhabitants of the City. Only 4 per cent of the sample considers it either impossible or very difficult to be able to find a lawyer, while 50 per cent consider it something they could definitely do (5.2.10.). Only one interviewee mentions having to stop doing other activities to be able to pay for the services of the lawyer.<sup>618</sup>

Victims find lawyers through the Yellow Pages,<sup>619</sup> their employment,<sup>620</sup> CIM,<sup>621</sup> social networks,<sup>622</sup> or are referred to the pro bono service by the OVD, the PPO, or the schools of their children.<sup>623</sup> Some Victims express receiving the service of their lawyers for a long period (e.g. two years).<sup>624</sup> Victims who have a lawyer do not show, in general, a better understanding about what is going on in their complaints. On the contrary, complaints seem to be left in the hands of their lawyers, and Victims mention the main updates in their complaints as explained by their lawyers<sup>625</sup> (e.g. *She told me that the case was filed away*<sup>626</sup>). Other Victims explain communicating frequently with lawyers about updates in order to decide how to proceed<sup>627</sup> and mostly do what is recommended by their lawyers.<sup>628</sup> Some Victims in that group were asked during second interviews about how things were going, and they replied that they needed to call their lawyers to request an update.<sup>629</sup>

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<sup>615</sup> V-I 1, 015.

<sup>616</sup> Ibid.

<sup>617</sup> V-I 2, 031.

<sup>618</sup> V-I 1, 042.

<sup>619</sup> V-I 1, 026.

<sup>620</sup> V-I 1, 041.

<sup>621</sup> V-I 1, 016; V-IwSP, 017; V-I 2, 017; V-I 1, 017; V-IwSP, 040; V-I 1, 045.

<sup>622</sup> V-I 1, 001; V-I 1, 026; V-I 2, 026; V-I 2, 015; V-IwSP, 008; V-I 1, 008; V-IwSP, 015; V-I 2, 015; V-I 2, 019; V-I 2, 052; V-IwSP, 030; V-I 1, 030; V-I 2, 035; V-I 1, 037; V-I 1, 041; V-I 1, 042; V-I 2, 049; V-I 1, 052; V-I 2, 052.

<sup>623</sup> V-I 2, 006; V-I 2, 007; V-IwSP, 009; V-IwSP, 010; V-I 2, 038; V-I 1, 044.

<sup>624</sup> V-I 1, 022.

<sup>625</sup> V-I 2, 003; V-I 1, 030; V-IwSP, 009; V-I 2, 017; V-I 2, 019; V-I 2, 026; V-I 1, 026; V Male-I 2, 028; V-IwSP, 030; V-I 2, 033; V-IwSP, 033; V-I 1, 037; V-I 2, 037; V-IwSP, 041; V-I 2, 044.

<sup>626</sup> V-I 1, 030.

<sup>627</sup> V-I 2, 015; V-I 2, 017; V-I 2, 044; V-IwSP, 005; V-I 1, 052; V-I 2, 052; V-I 2, 053.

<sup>628</sup> V-I 1, 017; V-I 1, 022; V-I 1, 042.

<sup>629</sup> V-I 2, 015; V-I 2, 017; V-I 2, 044.

Lawyers are on some occasions mentioned as necessary partners to start a fight.<sup>630</sup> For example, a Victim explains, *He has a lawyer and I do not have mine. I needed to go to sign. I was given a lawyer, but because I did not sign they [ultimately] did not give me one.*<sup>631</sup> Some Victims perceive a disadvantage during mediation or the legal procedure because they were by themselves while the accused had a lawyer.<sup>632</sup> For example, in one case a Victim did not consider the need for a lawyer during the first interview but, by the time of the second interview, felt the need to secure legal representation to continue in an equal position.<sup>633</sup> A Victim requested the help of a lawyer who was a friend of the family to assist her in mediation. She explains that thanks to her lawyer and the lawyer of the accused she felt supported and comfortable in understanding the legal procedure.<sup>634</sup> The Victim who is a lawyer specialist in domestic violence also confirms that there is a significant difference in the way Victims are received and taken care of when they approach organizations by themselves and when they do so with a lawyer.<sup>635</sup> The same perception is mentioned by another Victim when explaining his feeling that his complaint was not taken seriously by the PPO due to the lack of the presence of a lawyer.<sup>636</sup>

Lawyers are considered actors capable of understanding what is going on and able to communicate with organizations.<sup>637</sup> Lawyers project a feeling of *reassurance*,<sup>638</sup> *support*,<sup>639</sup> *speed*,<sup>640</sup> and are considered tools to overcome legal ignorance and enable an effective legal procedure. As explained by a Victim: *I was very bad until I made the decision to go to a lawyer.*<sup>641</sup> The lawyer was for one Victim also a tool used to avoid meeting with the accused.<sup>642</sup> A Victim even explains that she was able to understand what was going on in her case thanks to the explanations of her lawyer.<sup>643</sup> This Victim also explains going to the civil court to request updates or present legal documents following the directions of her lawyer.<sup>644</sup> In some cases lawyers are perceived as a tool

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<sup>630</sup> V-I 1, 016; V-I 1, 044.

<sup>631</sup> V-I 1, 016.

<sup>632</sup> V Male-I 1, 028; V Male-I 2, 028; V-IwSP, 048.

<sup>633</sup> V Male-I 1, 028; V Male-I 2, 028.

<sup>634</sup> V-I 2, 035.

<sup>635</sup> V-I 1, 032.

<sup>636</sup> V Male-I 2, 028.

<sup>637</sup> V-IwSP, 017 (e.g. the Victim explains to OFAVyT that she is waiting for her attorney to come back from vacation to request an extension of the restraining order); V-I 2, 001; V-I 2, 003; V-I 1, 004; V-I 1, 005; V-I 1, 006; V-I 2, 006; V-I 2, 007; V-I 1, 007; V-I 1, 013; V-I 1, 014; V-I 2, 014; V-I 1, 015; V-I 2, 015; V-IwSP, 017; V-I 2, 017; V-I 1, 022; V-I 1, 023; V-I 1, 026; V Male-I 2, 028; V-I 2, 033; V-IwSP, 033; V-I 2, 035; V-I 2, 037; V-I 1, 042; V-I 1, 044; V-I 1, 045; V-IwSP, 046; V-I 1, 052; V-I 2, 052; V-IwSP, 053; V-I 1, 053; V-I 2, 053.

<sup>638</sup> V-I 2, 037; V-I 1, 041; V-I 1, 045.

<sup>639</sup> V-I 1, 045; V-I 2, 049.

<sup>640</sup> V-I 2, 053.

<sup>641</sup> V-I 1, 042.

<sup>642</sup> V-IwSP, 053.

<sup>643</sup> V-I 2, 017.

<sup>644</sup> Ibid.

to take care of civil cases, a tool to help Victims solve certain problems, and as a resource that Victims can visit in order to have problems taken care of.<sup>645</sup>

Some Victims consult constantly with their lawyers about all their problems,<sup>646</sup> and others consult only about specific aspects.<sup>647</sup> The Victims who consult everything with their lawyers do not pay for the consultations since lawyers are friends or family members.<sup>648</sup> Other Victims are not happy with the performance of their lawyers. For example, a Victim says that during mediation she disagreed with the agreement proposed by her lawyer, but she did not express her disagreement, because at the moment she felt a need to trust in that decision.<sup>649</sup> Another Victim says that during the second interview the worst thing she did was to follow the recommendation of the lawyer to submit a complaint against the accused. She expresses: *There are things that you have to live because when the moment comes, things are not the way they were meant to be. It is easy to talk from behind a desk, but it is not what happens in reality.*<sup>650</sup> A different Victim says she changed lawyers four times before understanding that it was not the fault of the lawyers that the legal procedure was not moving fast enough, but the fault of the judicial system.<sup>651</sup>

Some Victims consider that paying lawyers entitles them to request the delivery of service.<sup>652</sup> Moreover, a number of Victims have a preconception of pro bono services as non-effective options because they do not pay lawyers directly.<sup>653</sup> In the eyes of some Victims, lawyers are accountable to them because as clients they pay for services.

Money and time are mentioned as obstacles to hiring a lawyer. The cost of hiring lawyers is not mentioned as an impediment,<sup>654</sup> but is seen as a heavy economic burden. These Victims explain this as having to sacrifice other uses of their money, agreeing on a payment in instalments,<sup>655</sup> or delaying the representation until they are able to handle the costs.<sup>656</sup> Other Victims hesitate calling back their lawyers, since

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<sup>645</sup> V-I 1, 002; V-IwSP, 003; V-I 1, 003; V-IwSP, 004; V-I 2, 006; V-I 1, 008; V-I 2, 011; V-IwSP, 011; V-I 1, 011; V-IwSP, 015; V-I 1, 015; V-I 2, 015; V-I 1, 016; V-I 1, 017; V-IwSP, 018; V-IwSP, 019; V-I 2, 019; V-I 2, 026; V-Male-I 2, 028; V-I 2, 031; V-I 1, 033; V-IwSP, 040; V-IwSP, 042; V-I 1, 044; V-I 1, 045; V-I 2, 045; V-I 1, 046; V-IwSP, 052.

<sup>646</sup> V-I 2, 052; V-I 2, 023.

<sup>647</sup> e.g. V-I 2, 015 (child support).

<sup>648</sup> V-I 2, 052; V-I 2, 023.

<sup>649</sup> V-I 1, 004; V-I 2, 007.

<sup>650</sup> The Victim made the above reference when having a telephone conversation to set up the second interview that never took place. During this short conversation, the Victim explained that she lived with the accused and was not convinced about showing up at the mediation set for that date. The Victim never attended mediation, and after this call a few attempts to contact her were made by e-mail, with no success, V-I 2, 049.

<sup>651</sup> V-IwSP, 019.

<sup>652</sup> V-I 1, 003; V-I 2, 015; V-I 1, 026; V-I 2, 031.

<sup>653</sup> V-I 1, 003; V-I 2, 015.

<sup>654</sup> V-Q, 004; V-I 1, 003.

<sup>655</sup> The Victim signed a six-month agreement for a monthly payment of ARS 600, V-I 2, 015.

<sup>656</sup> V-IwSP, 030; V-I 2, 031; V-I 1, 037; V-IwSP, 042; V-I 1, 044; V-IwSP, 048.

payment from previous services is pending,<sup>657</sup> and so *borrow* the lawyer of a friend who had *the possibility to pay*,<sup>658</sup> or borrow money from family members.<sup>659</sup> Time is another factor mentioned as an impediment to continue the civil case with a lawyer.<sup>660</sup> A Victim explains having *too many responsibilities with [her] children and work*<sup>661</sup> to be able to continue with her lawyer.

Some Victims who visited the OVD or OFAVyT mention that they were not assisted<sup>662</sup> or could not distinguish whether they were actually assisted by lawyers.<sup>663</sup> Five Victims relate lawyers who assisted them, at line 137, the OVD or OFAVyT, with the person who provided them with legal information.<sup>664</sup> Few Victims express talking with a lawyer from the multidisciplinary units,<sup>665</sup> and one Victim could not see the purpose of having one.<sup>666</sup>

### 5.5.3.3. Psychologists

Referrals by OFAVyT or the OVD to psychologists are mentioned by some Victims who activated those referrals as important emotional support on how to handle problems, on how to improve their quality of life, and on how to understand behaviour.<sup>667</sup> Some Victims do not feel convinced of the benefits of approaching psychologists, and others mention going or considering going to psychologists because it is a step they need to follow<sup>668</sup> or because they were “pushed to go.”<sup>669</sup> Other Victims were taking psychological therapy before the submission of complaints and consider the therapy useful in coping with legal procedures.<sup>670</sup> Other Victims rely on psychologists who were referred to them by their health insurance or by psychologists working at the CIM.<sup>671</sup>

A group of Victims considers it important that their children attend psychological therapy in order to overcome the violence experienced, and so as not to repeat it.<sup>672</sup> Two Victims gave up their therapy in order to afford the therapy for their children.<sup>673</sup>

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<sup>657</sup> V-IwSP, 004; V-IwSP, 005.

<sup>658</sup> V-I 1, 037.

<sup>659</sup> V-I 1, 044.

<sup>660</sup> V-I 2, 039.

<sup>661</sup> Ibid.

<sup>662</sup> V-I 1, 008.

<sup>663</sup> V-I 1, 002; V-I 1, 010; V-I 1, 011; V Male-I 2, 028; V-I 1, 042.

<sup>664</sup> V-IwSP, 034; V-I 1, 034; V-I 2, 034; V-I 2, 039; V-I 2, 043; V-I 2, 050.

<sup>665</sup> V-Q, 051; V-I 1, 051; V-I 2, 051; V-I 1, 054; V-I 2, 054.

<sup>666</sup> V-Q, 006.

<sup>667</sup> V-I 1, 016; V-I 1, 017; V-I 2, 017; V-I 1, 041; V-I 2, 019; V Male-I 2, 028; V-I 1, 004; V-I 1, 037; V-IwSP, 040; V-I 1, 013.

<sup>668</sup> V-IwSP, 009.

<sup>669</sup> V-I 2, 001; V-I 2, 012.

<sup>670</sup> V-IwSP, 019; V Male-I 1, 028; V-I 1, 043; V-I 1, 044.

<sup>671</sup> V-I 2, 012; V-IwSP, 012.

<sup>672</sup> V-I 1, 004; V-IwSP, 004; V-IwSP, 026; V-IwSP, 031.

<sup>673</sup> V-IwSP, 026; V-IwSP, 031.

The Victim who is a lawyer specialist in domestic violence explains that every client she represents is required to start physiological therapy.<sup>674</sup> She explains:

*With me it is like this, there is no other way. If they do not have a good health insurance, I refer them to the Comprehensive Centres for Women that works very well .... I refer them because I need to be talking with the psychologist, because there are things that are impossible for them to handle, people return [i.e. referring to Victims returning to the accused].*<sup>675</sup>

Group therapy offered by Comprehensive Centres for Women is considered helpful by one Victim.<sup>676</sup> It allows her to share personal experiences with peers and to reassure her as to her decision and persistence.

#### 5.5.3.4. Multidisciplinary Assistance

Some Victims realize the importance of their problems when they access multidisciplinary units and observe the intervention of many professionals and receive various referrals.<sup>677</sup> Yet, some Victims feel disenchanted when they do not see changes after this first instance of assistance,<sup>678</sup> and realize that further action is required on their behalf in order to solve problems.<sup>679</sup> That feeling is empowering for some Victims because they see a possible way out.<sup>680</sup> As explained by a Victim when responding about what she learned from her experience with OVD: *I stopped being the silly and naive woman everyone believed I was. [I learned] to make others respect me as a woman and not to allow offenses, and in the worst case, I think I will dare to fight back.*<sup>681</sup> The Victim who is a child mentions that the type of assistance given by OVD enabled her to voice what she wanted from the complaint.<sup>682</sup>

Some Victims perceive the multidisciplinary assistance offered by OFAVyT or OVD as a personalized assistance, where Victims are not a case number but a person who is listened to by assistants with a vocation<sup>683</sup> and where tools are offered to handle problems.<sup>684</sup> As explained by an interviewee: *If I had not gone to Lavalley [i.e. referring to the OVD], I would not have gone to the psychologist. I would have had nothing, and I would not have come here [i.e. referring to OFAVyT].*<sup>685</sup> Other Victims perceive that the multidisciplinary approach to conflicts is not helpful because it is a repetition of

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<sup>674</sup> V-I 1, 032.

<sup>675</sup> Ibid.

<sup>676</sup> V-I 2, 017.

<sup>677</sup> V-I 1, 008; V-I 1, 011; V-I 1, 012 V-I 1, 013; V-I 1, 017; V-I 2, 019; V-I 1, 023; V-I 1, 024; V-I 1, 025; V-I 1, 026; V-I 1, 027; V-I 1, 030; V-IwSP, 031; V-I 1, 033; V-I 1, 037; V-I 1, 044; V-I 1, 052; V-I 1, 046; V-I 1, 053; V-I 1, 045.

<sup>678</sup> V-I 2, 019; V-I 1, 027; V-I 1, 030; V-I 1, 046.

<sup>679</sup> V-I 1, 024; V-I 1, 027; V-I 1, 046.

<sup>680</sup> V-I 1, 027; V-I 1, 030; V-I 1, 052.

<sup>681</sup> V-I 2, 027.

<sup>682</sup> V-I 1, 052.

<sup>683</sup> V-I 1, 034; V-I 1, 041.

<sup>684</sup> V-I 2, 037.

<sup>685</sup> V-I 1, 016.

information already given and received<sup>686</sup> and not directly related to solving problems.<sup>687</sup>

OFAVyT is mentioned as enabling a space of support and tranquillity,<sup>688</sup> a space for reflection,<sup>689</sup> and offering a unit that informs them *step by step*,<sup>690</sup> performing telephone follow-ups.<sup>691</sup> Emotional support is mentioned as important by a Victim who explains that emotions are what push Victims to continue with abusive relationships.<sup>692</sup> Some Victims, however, explain that OFAVyT did not add much to enable the solution of their problems,<sup>693</sup> and that the type of assistance offered does not contribute to reducing the immediate increase in the risk of experiencing violence.<sup>694</sup> Victims were asked about the resources used at the time of second interviews, and half of them could not identify what the acronym OFAVyT meant.<sup>695</sup> OFAVyT was confused with the OVD,<sup>696</sup> or recognized after receiving a reference and assimilating OFAVyT to *the ones that always call*,<sup>697</sup> while the remaining Victims could not distinguish any relation.

The OVD, for some Victims, becomes the place to submit subsequent complaints.<sup>698</sup> Some Victims appreciate that at OVD many things are solved at once, and that they can start there and then be referred to different organizations.<sup>699</sup> The time required to be assisted is mentioned as one of the main obstacles and as the element that makes some Victims doubt whether to return.<sup>700</sup> One Victim perceives that the number of people the OVD assists daily made her feel that providers are saturated and only want to collect factual information.<sup>701</sup> Moreover, multidisciplinary referrals are difficult to comply with for some Victims due to daily obligations,<sup>702</sup> yet many remember that they were given referrals to lawyers and/or psychologists and some activated them.<sup>703</sup> The OVD is also mentioned as a place where Victims perceive a sense of belonging to

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<sup>686</sup> V-I 1, 001.

<sup>687</sup> V-I 1, 005.

<sup>688</sup> V-I 1, 001.

<sup>689</sup> V-I 1, 027; V-I 2, 027.

<sup>690</sup> V-I 2, 026.

<sup>691</sup> V-I 2, 027.

<sup>692</sup> V-I 1, 051.

<sup>693</sup> V-I 1, 001.

<sup>694</sup> V-I 1, 032.

<sup>695</sup> V-I 2, 012; V-I 2, 014; V-I 2, 033; V-I 2, 027; V-I 2, 039; V-I 2, 041; V-I 2, 045; V-I 2, 050; V-I 2, 051; V-I 2, 052.

<sup>696</sup> V-I 2, 012.

<sup>697</sup> V-I 2, 027.

<sup>698</sup> V-I 2, 003; V-I 1, 012; V-I 1, 019; V-I 2, 019; V-IwSP, 029; V-I 1, 044; V-I 2, 044.

<sup>699</sup> V-I 1, 027.

<sup>700</sup> V-I 2, 006; V-I 1, 019; V-I 2, 019; V-I 1, 034; V-I 2, 049.

<sup>701</sup> V-I 2, 049.

<sup>702</sup> A Victim explains that she could not visit the psychologist, as suggested by OVD, because she had to work and take care of the children, V-I 1, 011; another Victim states she was unable to deal with the costs of lawyers and psychologists for her and her child, V-I 2, 031; a different Victim expresses difficulties in complying with everything, V-I 1, 024.

<sup>703</sup> V-IwSP, 015; V-I 1, 019; V-I 1, 033; V-I 1, 045.

a group and many Victims mention how it surprised them to see the number of women in the waiting room.<sup>704</sup>

The Comprehensive Centres for Women are considered a place of support where Victims have the chance to recover and understand what their real possibilities are.<sup>705</sup> The Comprehensive Centres for Women are mentioned as providers of psychologists, group therapy, and lawyers. Legal documents and observations made during meetings at OFAVyT show that OVD and OFAVyT provide Victims with the numbers to the Comprehensive Centres for Women to obtain psychological and/or legal assistance. Some Victims recall receiving the number of the Comprehensive Centres for Women during meetings<sup>706</sup> and some approach the Comprehensive Centres for Women, yet not many.<sup>707</sup> A Victim who approached the Comprehensive Centres for Women explains that there she made many friends who had experienced the same situation;<sup>708</sup> while another Victim highlights the support received by professionals.<sup>709</sup> Two Victims explain that they were also provided with lawyers and these lawyers are currently taking care of their complaints.<sup>710</sup> Some Victims view the Comprehensive Centres for Women as a “club” that provides support and assistance. Therefore, the multidisciplinary approach might have value in enhancing a feeling of belonging to a group.

#### *5.5.3.5. Support Provided by Others*

Providers record the social environment of Victims in order to assess their vulnerability to being abused. Legal documents indicate that twenty-six Victims have “significant support provided by others,” while eleven Victims have “support provided by others, yet not significant,” and two Victims have “no support.” These numbers might say something about the characteristics of Victims who submit complaints: most have affectional support.

Victims who have “significant support provided by others” refer to social networks that know about the situation they are living in and that can assist them in case of need. These social networks include at least two of the following members: family, friends, psychologists, lawyers, and colleagues.<sup>711</sup> During second interviews Victims

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<sup>704</sup> V-I 1, 002; V-I 1, 014; V-I 1, 023; V-I 2, 033; V-I 1, 042.

<sup>705</sup> V-I 1, 045.

<sup>706</sup> V-I 1, 006.

<sup>707</sup> V-IwSP, 017; V-Q, 040; V-IwSP, 040; V-I 2, 045; V-IwSP, 045.

<sup>708</sup> V-I 1, 017.

<sup>709</sup> V-I 1, 045.

<sup>710</sup> Ibid.; V-IwSP, 046.

<sup>711</sup> V-I 1, 001 (boyfriend and office colleagues); V-IwSP, 002 (sisters); V-IwSP, 004 (social network); V-IwSP, 011 (family and two friends); V-IwSP, 014 (family, friends, psychologist); V-IwSP, 030 (family, friends, psychologist); V-IwSP, 019 (family, friends, psychologist); V-IwSP, 015 (family members); V-IwSP, 026 (friends); V-IwSP, 023 (family and husband); V-IwSP, 021 (family and friends); V-IwSP, 024 (family); V-IwSP, 017 (family, psychologist, lawyer, friends); V-IwSP, 018 (family, friends, office colleagues); V-IwSP, 033 (family and office colleagues); V-IwSP, 037 (family and psychologist); V-IwSP, 042 (friends and children); V-IwSP, 040 (family and friends); V-IwSP, 045 (family and friends); V-IwSP, 046 (family); V-IwSP, 052 (husband, family, psychologist); V-IwSP, 054 (family and friends); V-IwSP, 053



were asked again about their social networks with a question related to the extent they spoke to or received support from someone during the months between first and second interviews. Victims express talking with colleagues about their complaints,<sup>712</sup> building a new group of friends,<sup>713</sup> talking to former friends,<sup>714</sup> and talking to family members.<sup>715</sup>

Victims who have “support provided by others, yet not significant” express having the support of a loved one who in many cases lives in a neighbouring country.<sup>716</sup> Some of these Victims express having a social network to rely on during first interviews, yet during second interviews that support was no longer present.<sup>717</sup> On the contrary, one of those Victims states strengthening the relationship with her family between the first and second interview.<sup>718</sup>

As indicated, two Victims state being alone, having “no support.” Therefore, these Victims seem to have no support from a social network.<sup>719</sup>

### 5.5.3.6. *Spiritual Activities*

Two Victims mention religion as a means for support and as a companion to transit through problems with trust.<sup>720</sup> These isolated references seem surprising for

(family and friends); V-IwSP, 034 (family); V-IwSP, 049 (family and friends); V-IwSP, 044 (neighbour and friend, because the family lives in Bolivia).

<sup>712</sup> V-I 2, 001.

<sup>713</sup> A Victim expresses talking to new friends who live in the same welfare shelter and who also experienced violence, V-I 2, 007; another Victim lives in a hotel and expresses that her neighbours help her as she helps them, they support each other, V-I 2, 039.

<sup>714</sup> A Victim expresses having 2 friends in the province of Buenos Aires and that she spent Christmas with one of them, though the Victim was evasive in answering why she went to her friend's house to spend Christmas. According to legal documents, the neighbour who was called to testify stated not wanting to get involved any more in the violence because the situation repeats over and over, V-I 2, 027; and finally another Victim explains how she re-established communication with her friends after the relationship with the accused ended, V-I 2, 052.

<sup>715</sup> V-I 2, 029 (receives help from her son); V-I 2, 007 (talks with her father); V-I 2, 006 (shares her problems with a brother in Paraguay, with the mother of her granddaughter, and with her 11-year-old granddaughter); V-I 2, 052 (receives support from her mother).

<sup>716</sup> V-IwSP, 005 (nobody knows); V-IwSP, 007 (nobody knows); V-IwSP, 008 (nobody knows); V-IwSP, 048 (nobody knows); V-IwSP, 006 (nobody knows, only a friend); V-IwSP, 029 (nobody knows, and family lives in Bolivia); V-IwSP, 039 (nobody knows, and family lives in Peru); V-IwSP, 025 (nobody knows, and has no family in Argentina); V-IwSP, 010 (brother knows, but rest of the family lives in Bolivia); I-V 1, 013 (network knows, but do not want to get involved); V-IwSP, 016 (only sister-in-law knows); V-IwSP, 048 (her children know); V-IwSP, 031 (mother-in-law and acquaintances know, but she does not like to ask for help: therefore, nobody knows); V-IwSP, 027 (one friend knows, but family lives in Paraguay).

<sup>717</sup> e.g. the Victim expresses during the first interview that she has a friend who supports her. During the second interview, she mentions not seeing that friend any longer and believes her friend does not want to see her anymore because she returned to the accused, V-I 2, 037.

<sup>718</sup> The Victim lost a child between the first and second interview and had to spend time in the hospital. During this period she regained the relationship with her family, and since then the family has become a big support for her, V-I 2, 051.

<sup>719</sup> V-I 2, 014 (e.g. the Victim explains having nobody to help her, neither family nor friends, though she meets with a psychologist); V-I 1, 019.

<sup>720</sup> V-I 1, 042; V-I 2, 044.

Argentina, a country with a very high number of people who claim to believe in God.<sup>721</sup> Yoga and meditation techniques are also considered by Victims as important supports that enhance reflection. A Victim explains how yoga and meditation techniques are effective tools to first understand herself and that *only then you start seeing the other person*.<sup>722</sup>

#### 5.5.4. Relation with State Organizations

This sub-division analyses how Victims relate to state organizations and what elements they highlight as important. The type of assistance and communication with state organizations is mentioned as significant for Victims. In addition, the number of problems Victims encounter that cannot be treated by a single state organization is also considered an important element to enable the use of rights.

##### 5.5.4.1. Assistance

Certain activities performed by state organizations are perceived by Victims as beneficial in their transit through the justice system. State organizations that remain active are considered efficient.<sup>723</sup> Follow-up calls are understood by Victims as a sign that their complaints are considered important.<sup>724</sup> Moreover, actions taken by state organizations make Victims feel supported,<sup>725</sup> protected,<sup>726</sup> confident,<sup>727</sup> and reassured in their decision to pursue complaints.<sup>728</sup> One Victim perceives state organizations as a place that can enable the communication with the accused.<sup>729</sup> Some Victims are relieved when knowing that some state organizations provide 24-hours assistance.<sup>730</sup>

Active listening is also considered a sign of support.<sup>731</sup> Receiving an orientation on what to do<sup>732</sup> and having the chance to share the facts and be heard<sup>733</sup> are perceived as positive feelings experienced through the access to state organizations. Yet, other Victims express being tired of repeating the same facts over and over.<sup>734</sup> A Victim highlights the importance of the physical space, where Victims can have a

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<sup>721</sup> A survey performed by CONICET in 2008 shows that 91% of the population believes in God, while 61.1% express having a relationship with that God, see Mallimaci, Esquivel, and Irrazábal, “Primera Encuesta Sobre Creencias Y Actitudes Religiosas En Argentina.”

<sup>722</sup> V-I 1, 033; V-I 2, 033.

<sup>723</sup> V-I 2, 037; V-I 1, 045.

<sup>724</sup> V-I 1, 037 (expresses feeling happy with the pro bono attorney because the attorney calls her all the time); V-I 1, 008 (expresses feeling confident by the type of follow-ups the PPO does); V-I 2, 006 (expresses feeling supported by the PPO because they call her frequently and provide guidance to her); V-I 1, 012.

<sup>725</sup> V-I 1, 033; V-I 1, 034; V-I 2, 012; V-I 2, 050; V-I 1, 008.

<sup>726</sup> V-I 1, 051.

<sup>727</sup> V-I 1, 027; V-I 1, 042; V-I 2, 039.

<sup>728</sup> V-I 2, 043.

<sup>729</sup> V-I 1, 015.

<sup>730</sup> V-I 1, 050.

<sup>731</sup> V-I 1, 024; V-I 1, 030.

<sup>732</sup> V-I 1, 012; V-I 1, 053; V-I 2, 039.

<sup>733</sup> V-I 2, 003; V-I 1, 027; V-I 1, 030; V-I 1, 033; V-I 1, 034; V-I 1, 046.

<sup>734</sup> V-IwSP, 030.

conversation in a private and quiet atmosphere that allows them to freely express themselves.<sup>735</sup> Leaving records of the violence experienced is also considered supportive assistance because someone will preserve the information about a potential femicide.<sup>736</sup>

Awareness of positive experiences of other Victims provides an initial sense of trust (or mistrust) in the judicial system by Victims who submit first complaints. However, some Victims trust in state organizations based only on their existence<sup>737</sup> and consider them an agent that can take problems away from them.<sup>738</sup> Other Victims distrust the judicial system and consider it unable to solve problems.<sup>739</sup> A Victim expresses that even when she does not trust, she hopes the judicial system will help her.<sup>740</sup> Trust and distrust develop from successful or unsuccessful stories shared by Victims who could solve or could not solve their problems by using the same resources. The media is also mentioned as influencing the trustworthy relation between Victims and state organizations. Successful cases depicted in the media give Victims an initial sense of trust,<sup>741</sup> while unsuccessful cases make them believe that nothing will be done with their cases either.<sup>742</sup>

Long waits for actions by state organizations are perceived negatively by Victims. Excessive telephone calls can be perceived negatively and calls received in a moment of the day when Victims are performing other activities or obligations are perceived as inefficient.<sup>743</sup> Negative experiences mostly relate to events at police stations. The male Victim is the only one who expressed a feeling of trust after submitting the complaint at the police station.<sup>744</sup> Victims highlight as negative when providers: (i) judge the validity or severity of their complaints;<sup>745</sup> (ii) delay assistance, do not take complaints, and refer Victims;<sup>746</sup> (iii) give Victims wrong assistance and make them bear the consequences of activating complaints that bring them more problems than solutions;<sup>747</sup> (iv) show limited compromise and involvement;<sup>748</sup> and (v) facilitate no tangible changes in their problems even after encouraging meetings.<sup>749</sup>

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<sup>735</sup> V-I 1, 024.

<sup>736</sup> V-I 1, 034.

<sup>737</sup> V-I 1, 021; V-I 1, 026; V Male-I 1, 028; V-I 1, 038; V-I 1, 045; V-I 1, 042.

<sup>738</sup> V-I 2, 041.

<sup>739</sup> V-I 1, 001; V-I 2, 001; V-I 2, 019; V-I 1, 011.

<sup>740</sup> V-I 2, 049.

<sup>741</sup> V-I 1, 050.

<sup>742</sup> V-I 1, 048.

<sup>743</sup> V-I 2, 031; V-I 2, 050.

<sup>744</sup> The Victim expresses that he left the police station with a feeling that everything would work out, V Male-I 1, 028.

<sup>745</sup> V-I 1, 043; V-I 1, 024 (e.g. the latter two Victims mention having to convince police officers to take their complaints because they could not show physical harm); V-I 2, 031; V-I 2, 019; V-I 1, 041; V-I 2, 045; V-I 1, 048; V-IwSP, 004; V-I 1, 012.

<sup>746</sup> V-I 2, 019; V-I 1, 024; V-I 1, 032; V-I 2, 035; V-IwSP, 040; V-I 2, 050.

<sup>747</sup> V-I 1, 046; V-IwSP, 046.

<sup>748</sup> V-I 1, 051.

<sup>749</sup> V-I 1, 027; V-I 2, 019.

Some Victims were asked during second interviews what type of changes they would like to see in the judicial system. A Victim explains that she would like from the judicial system: centralization of tasks, more assistance, more empathy, and not to have to repeat the facts several times.<sup>750</sup> This Victim also recalls that a provider suggested to her that in order to receive help she needed to go crying to the different places and to make others feel pity for her.<sup>751</sup> Another Victim explains that maybe receiving preventive measures would have been beneficial, though she explains that most probably she would not have complied.<sup>752</sup>

#### 5.5.4.2. *Communication*

Feeling heard during the process became one of the most unanimous perceptions. Twenty-one Victims were asked during second interviews whether they felt listened to during the legal procedure, and with the exception of two,<sup>753</sup> all answered yes.<sup>754</sup> The two who responded in the negative indicate that they do not feel listened to by the police officers, but they do feel listened to by the psychologists of OFAVyT.

Victims communicate with the state organizations by making walk-in appearances or by telephone.<sup>755</sup> Walk-in appearances are made at an initial stage of the legal procedure when Victims approach one of the access points or when they are referred from the police station to the OVD. At an initial stage, telephone communications are perceived mostly for emergency cases where Victims or third parties call lines 911 or 137.<sup>756</sup> Once cases are opened, telephone calls are mentioned as the main means of communication with the PPO and with lawyers.<sup>757</sup> Victims who attend psychological therapy communicate during their scheduled appointments, and Victims who communicate with civil courts attend as walk-ins mostly after they submit complaints at OVD. Only one Victim expresses walking to the civil court to request updates on her case.<sup>758</sup> OFAVyT uses telephone calls to set up appointments and to do follow-ups. No Victim expresses communicating with the resource using e-mail, and only the male Victim expresses doing walk-ins at the PPO to request updates.<sup>759</sup>

Communications that reflect care and follow-up calls are perceived by Victims as a sign that reassures them as to the importance of their complaints and that state

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<sup>750</sup> V-I 2, 045.

<sup>751</sup> Ibid.

<sup>752</sup> V-I 2, 051.

<sup>753</sup> V-I 2, 019; V-I 2, 041.

<sup>754</sup> V-I 2, 001; V-I 2, 003; V-I 2, 006; V-I 2, 007; V-I 2, 014; V-I 2, 024; V-I 2, 026; V-I 2, 027; V-I 2, 031; V-I 2, 033; V-I 2, 034; V-I 2, 035; V-I 2, 037; V-I 2, 038; V-I 2, 039; V-I 2, 043; V-I 2, 045; V-I 2, 050; V-I 2, 051; V-I 2, 053.

<sup>755</sup> Thirty-two Victims left their cell phone numbers to be reached for a second interview. Sixteen Victims left both their cell phone and telephone numbers. Five Victims left only their telephone numbers; while 2 Victims did not leave a telephone number, but did leave their e-mail addresses.

<sup>756</sup> e.g. V-I 1, 030.

<sup>757</sup> V-I 1, 001; V-I 1, 005; V-I 1, 008; V-I 1, 012; V-I 1, 024; V Male-I 1, 028; V-I 2, 003; V-I 2, 031; V-I 2, 050; V-I 2, 051; V-I 1, 006.

<sup>758</sup> V-I 1, 007.

<sup>759</sup> V Male-I 1, 028.

organizations care about their problems.<sup>760</sup> This gives Victims a feeling of trust in the help they might receive from state organizations, and for some Victims the calls gave them an incentive to continue with their complaints.<sup>761</sup> Some Victims view the number of calls as invasive, and that feeling is even more acute in Victims who live with the accused. These Victims explain that they do not want to be called any more,<sup>762</sup> that they are confused by the number of calls,<sup>763</sup> and that they feel *harassed* by the repeated visits of police officers.<sup>764</sup>

The type of questions and ways in which meetings are conducted are important for the confidence of Victims. Questions that have an inquiring connotation (e.g. *But, do you have any injuries?*<sup>765</sup> *Are you hit?* *Did he hit you?*<sup>766</sup>) are mentioned by Victims as a means to explain their negative experience at police stations. One Victim assimilates the male gender of the police officer to the inquisitorial questioning.<sup>767</sup> Victims express feeling interrogated and not believed.

The lack of communication with resources may leave Victims in a vulnerable position. The Victim who is a child explains having no relation with the state organizations.<sup>768</sup> The lack of relation places her in a vulnerable situation if needing to self-protect when something happens while performing daily activities, because she does not know from whom or where to seek immediate assistance.<sup>769</sup>

Legal documents of Victims show that only one Victim presented a hand written complaint to the PPO. There she addresses her problem and states that she is looking forward to meeting the prosecutor.<sup>770</sup> It was not possible to contact this Victim for a second interview, and, therefore, what elements she used to write the complaint is not known.

Some Victims develop strategies to avoid being contacted by state organizations. A Victim explains that when the police officer came to enforce the restraining order, she lied and said that the accused was not in the house, because her son was visiting from Bolivia and she did not want him to witness the episode.<sup>771</sup> One Victim explains that in her previous complaint she changed the chip of her telephone in order to avoid receiving calls, and she continues living with the accused.<sup>772</sup> Another Victim was contacted for the second interview through the telephone number of her employer. The employer answered the telephone and explained that she had lost contact with the Victim because she had reconciled with the accused, and she stated that the Victim is

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<sup>760</sup> e.g. V-I 2, 050; V Male-I 1, 028; V-I 1, 021.

<sup>761</sup> e.g. a Victim finds an incentive to continue with the complaint after a call from the PPO, V-I 1, 034.

<sup>762</sup> V-I 1, 009.

<sup>763</sup> V-I 2, 052; V-IwSP, 009.

<sup>764</sup> V-IwSP, 002.

<sup>765</sup> V-I 1, 045.

<sup>766</sup> V-I 1, 048.

<sup>767</sup> V-I 1, 045.

<sup>768</sup> V-I 2, 052.

<sup>769</sup> Ibid.

<sup>770</sup> V005.

<sup>771</sup> V-I 1, 010.

<sup>772</sup> V-I 1, 048.

not answering calls any longer.<sup>773</sup> Therefore, even when telephone calls can have a positive impact on Victims, those who are not prepared to face the legal procedure find a way to avoid the follow-ups of state organizations. Some Victims never replied to the call to attend second interviews and an automatic voicemail answered.<sup>774</sup> Some Victims may have changed their telephone numbers to avoid calls because they continue with the abuser.

#### 5.5.4.3. *Multiple Problems*

Domestic violence does not block the occurrence of other problems in the lives of Victims.<sup>775</sup> Victims who started to face new problems indicate that it became even more difficult for them to follow the domestic violence complaints. Some Victims explain that this is related to the few possibilities given to organize themselves in order to respond to the requirements of complaints.<sup>776</sup> Victims express that legal procedures consist of non-demanding periods and very demanding periods.<sup>777</sup> Very demanding periods cannot be anticipated and hence when the demands occur Victims might also be handling other important problems, which lead them to be unresponsive or feeling stressed.<sup>778</sup> Under these circumstances, Victims might skip appointments or request rescheduling of appointments, thereby prolonging the legal procedure.

The implementation of public policies to solve original problems sometimes triggers additional problems. For example, a Victim was sent to a welfare shelter with her two children due to the severity of the violence experienced and expresses that being in the welfare shelter became a problem because she quarrelled with others there, and the psychologist wants to make her believe she is “crazy.”<sup>779</sup> It should be noted that the Victim does not compare the option of the welfare shelter to the option of staying in the house, and that comparison was not asked in this study in order to avoid re-victimization. The Victim, however, did mention that she wants to find a job so as to be able to rent a space for herself and her children. Another Victim explains that after the accused left she started experiencing economic constraints and had to move with her children to the house of her mother.<sup>780</sup> She mentions needing to hire a lawyer to

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<sup>773</sup> V-I 2, 013.

<sup>774</sup> In all cases mentioned below, the calls were made six months after first interviews, with the previous acceptance of Victims and to the contact information provided by Victims. Calls were made from the PPO toll-free telephone number. The PPO has no possibility to block the telephone number. In all cases, attempts were made to contact Victims during different dates and different times of the day. A group of 6 Victims was impossible to contact (V-I 1, 002; V-I 1, 009; V-I 1, 020 and V-I 1, 036: six attempts were made and a voicemail answered right away; V-I 1, 010: six attempts were made to her cell phone and a voicemail answered right away, and two attempts were made to her husband's cell phone and a voicemail activated after several rings; V-I 1, 016: seven attempts were made over the telephone and a voicemail activated after several rings. Only on one occasion, a child answered and said that his mother was at work).

<sup>775</sup> e.g. 2 Victims experience problems finding permanent housing, V-I 2, 007; V-I 2, 019.

<sup>776</sup> V-I 2, 052.

<sup>777</sup> Ibid.

<sup>778</sup> Ibid.

<sup>779</sup> V-I 1, 007; V-I 2, 007.

<sup>780</sup> V-I 1, 011.

deal with child support even though this would imply allowing visitation.<sup>781</sup> Another Victim explains needing to request custody in order to avoid future problems.<sup>782</sup> Lastly, a number of Victims express that the domestic violence complaints were not the best option to handle the alcohol addiction of their partners.<sup>783</sup> These last Victims further express problems in filing the criminal complaints and in finding the right solution to their situations.

#### *5.5.4.4. Multiple State Organizations*

Victims being assisted by multiple state organizations face difficulties in understanding who is who, and what they are meant to do. Moreover, if they are contacted by the multiple state organizations and provided with information, many Victims do not understand who is calling and what that provider can do in relation to their problems. Even though prior to interviews Victims were informed twice in this study about the purpose of the interviews and had provided consent, Victims were repeatedly confused during interviews and asked questions about their complaints and about how to proceed. Some Victims, nevertheless, appreciate having multiple state organizations. They remark positively that after submitting their first complaints they realized they had many possibilities to seek help besides going to the police stations.<sup>784</sup>

#### **5.5.5. Legal Procedure**

This sub-division analyses how Victims relate to the legal procedure, and how they perceive different options as instances to rights enablement. Consequently, a note on criminal complaints is made, followed by an analysis about how Victims experience mediation and trial.

##### *5.5.5.1. Criminal Complaints*

Many Victims, as seen above, perceive the transit through the judicial system in phases. The first phase is the police station, the second phase is the OVD and the civil court, and the final phase is the PPO. In view of this, the PPO appears as, for some Victims, the final phase and the last instance of assistance.<sup>785</sup> This can be explained because criminal complaints pursue a social interest while civil complaints pursue a private interest. Consequently, criminal complaints may continue even with the inaction of Victims and without legal representation. OFAVyT contacts Victims as soon as criminal complaints arrive, and the investigation starts regardless of the participation of Victims. Some Victims who did not continue with their civil complaints mention that they continued with criminal complaints because they received a call from the PPO, which indicates that if they had not received that call, they might not have continued with their complaints. However, prosecutors lose their

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<sup>781</sup> Ibid.

<sup>782</sup> V-I 1, 015.

<sup>783</sup> V-I 1, 030.

<sup>784</sup> V-I 1, 006.

<sup>785</sup> V-I 1, 052.

principal evidence when Victims are unwilling to continue and, as mentioned in chapter 4, the legal procedure is very difficult to sustain.

#### 5.5.5.2. Mediation

As illustrated in Figure 6 below, most Victims did not experience civil or criminal mediation.<sup>786</sup> Criminal mediation was offered to some Victims by OFAVyT, yet Victims did not accept it because (i) they did not want to meet the accused,<sup>787</sup> (ii) they wanted to file away the complaints,<sup>788</sup> (iii) they wanted stronger penalties for the accused,<sup>789</sup> (iv) their lawyers recommended not to participate,<sup>790</sup> or (v) the problem was solved by other means (e.g. divorce,<sup>791</sup> couple returned to cohabitation,<sup>792</sup> lost contact with the accused<sup>793</sup>). In other cases, criminal mediation is offered yet not scheduled because Victims stop responding to the PPO.<sup>794</sup> Moreover, in other cases OFAVyT recommended Victims and prosecutor units not consider the option of criminal mediation based on the type of abuse experienced by Victims<sup>795</sup> or on other particularities,<sup>796</sup> and based on the fact that this was the second offence by the accused.<sup>797</sup> A case did not experience mediation, even though the Victim wanted it,

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<sup>786</sup> V001, V002, V006, V008, V009, V012, V016, V017, V018, V019, V020, V025, V026, V027, V029, V030, V032, V034, V036, V037, V038, V041, V042, V043, V044, V046, V047, V048, V050, V051, V052, V054.

<sup>787</sup> V-IwSP, 017; V-I 2, 017; V-IwSP, 025; V-IwSP, 036; V-IwSP, 041; V-I 2, 041; V-IwSP, 042; V-IwSP, 047.

<sup>788</sup> V-IwSP, 006; V-I 2, 006.

<sup>789</sup> A Victim considered mediation at the time of the first interview, though by the time of second interviews she changed her mind because she wanted to see some stronger measures against the accused, V-I 2, 019; V-I 1, 019.

<sup>790</sup> V-I 2, 041; V-IwSP, 041; V-I 1, 001.

<sup>791</sup> A Victim does not consider mediation because the problem was solved after the granting of divorce, V-I 1, 026; V-I 2, 026.

<sup>792</sup> V-I 1, 044; V-I 2, 044.

<sup>793</sup> A Victim states not needing mediation because the abuse was an isolated act and because she lost contact with the accused immediately after the complaint was submitted, V-I 2, 047.

<sup>794</sup> A Victim moved outside of the City with the accused, V-IwSP, 002; another Victim wants mediation to oblige the accused to compromise and agree to treatment for his alcohol addiction, though there is no further reference made to mediation, V-IwSP, 020; V-I 1, 020, June 27, 2013; mediation is suggested and a third Victim considers it a good option and requests OFAVyT inform her when the accused is notified. There is no registry in legal documents that mediation took place or was scheduled, V-IwSP, 032; V-I 1, 032.

<sup>795</sup> A Victim is not perceived by OFAVyT to be in condition to mediate due to her history of violence. OFAVyT suggests that she undertake psychological therapy V-IwSP, 008; V-I 1, 008; another Victim believes she was in condition to mediate, but OFAVyT does not agree, and the Victim follows the suggestion of OFAVyT V-IwSP, 037; V-I 1, 037; V-I 2, 037; the group is completed by, V-IwSP, 018; V-I 2, 043.

<sup>796</sup> Mediation is not suggested as an option because the Victim submitted the complaint as a third party against her niece to protect her grand-nephew, V-I 1, 038; V-I 2, 038.

<sup>797</sup> A Victim wants to participate in mediation because the former partner of the accused did so with positive results. However, the PPO does not consider mediation because of the record of the accused, V-I 1, 050; V-I 2, 050.



because the complaint was referred to the federal justice system.<sup>798</sup> Lastly, mediation was never suggested to some Victims.<sup>799</sup>

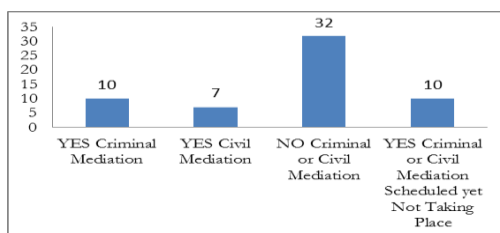


Figure 6. Presence of Mediation

In some cases the civil or criminal mediation was scheduled, yet never took place.<sup>800</sup> Victims either expressed a desire to participate in criminal mediation but did not attend, and without communication with the PPO,<sup>801</sup> or attended mediation but the accused did not.<sup>802</sup>

Criminal mediation took place in ten out of the fifty-four interviews.<sup>803</sup> In half of these ten cases Victims mention the presence of lawyers for both parties during mediation (mostly the Public Defender representing the accused and OFAVyT representing Victims). In most criminal mediations parties agreed on: (i) a respectful communication,<sup>804</sup> (ii) the avoidance of any type of communication,<sup>805</sup> or (iii) the limitation of respectful communication to issues related to their children.<sup>806</sup> In addition to the respectful communication, some parties agreed on a visitation

<sup>798</sup> A Victim expresses in both interviews that she considers mediation a good idea in order to talk with the accused. However, the complaint was referred to the federal justice system, V-I 1, 034; V-I 2, 034.

<sup>799</sup> V-IwSP, 009; V-I 1, 009; V-IwSP, 012; V-I 1, 012; V-IwSP, 016; V-I 1, 016; V-IwSP, 027; V-I 1, 027; V-I 2, 027; V-IwSP, 029; V-IwSP, 030; V-I 1, 030; V-I 1, 046; V-I 2, 046; V-IwSP, 048; V-I 1, 048; V-I 1, 051; V-I 2, 051.

<sup>800</sup> V005, V023, V033, V040, V049, V021, V003, V004, V045, V022.

<sup>801</sup> e.g. the accused could attend mediation, and informed the Victim. Both decided not to attend, but did not inform the PPO. The Victim does not consider rescheduling because she considers the problem solved (V-I 2, 021); another Victim refused mediation during the first meeting with OFAVyT. After 30 days she was asked again and she accepted. Mediation was scheduled but none of the parties attended. The day before mediation the Victim was asked whether she wanted to do the second interview right after the mediation, and she said she did not know whether she would attend mediation, because she was with her children and believed the accused tore up the paper with the information about mediation (V-IwSP, 049; V-I 2, 049); in another case legal documents show that there was a civil mediation scheduled to agree on visitation and child support but there is no information whether it took place. The Victim did not mention mediation during the first interview and the second interview did not take place (V-IwSP, 040); the group is completed by, V-I 1, 005; V-IwSP, 005; V-IwSP, 023; V-I 1, 023; V-I 2, 023.

<sup>802</sup> A Victim considers mediation a way to show limits to the accused. In her words, "It is a way to tell [the accused] 'here I am.' It is not that I am afraid of you, or angry, but let us stop this because it is not good for anyone." Mediation was scheduled and the accused did not attend. In the second interview the Victim expresses that she does not feel like re-scheduling mediation because she is taking care of a crisis involving her child, V-IwSP, 033; V-I 1, 033; V-I 2, 033.

<sup>803</sup> V024, V039, V053, V010, V011, V013, V014, V015, V031, V007.

<sup>804</sup> V-IwSP, 024; V-I 2, 039; V-IwSP, 013; V-IwSP, 014.

<sup>805</sup> V-IwSP, 053.

<sup>806</sup> V-IwSP, 015; V-I 2, 031.

schedule<sup>807</sup> or the accused agreed to start treatment for alcohol addiction.<sup>808</sup> A Victim explains that mediation could not help her to force the accused to start treatment for alcohol addiction, and that she believes alcohol is the core problem.<sup>809</sup>

Some Victims mention mediation agreements as enabling solutions to problems.<sup>810</sup> For example, mediation enabled peaceful communication,<sup>811</sup> self-reflection for Victim,<sup>812</sup> and an agreement. However, Victims point out child support<sup>813</sup> and alcohol treatment<sup>814</sup> as aspects of mediation agreements that are not complied with. Some Victims explain that after mediation they neglected the rights of their children to child support<sup>815</sup> or visitation<sup>816</sup> in order to avoid further contact with the accused. Lastly, a Victim expresses that the accused does not comply with the entire agreement.<sup>817</sup>

One of the Victims attended criminal mediation without a lawyer, whereas the accused had legal representation.<sup>818</sup> That Victim explains feeling in a disadvantaged position because the lawyer of the accused was steering the mediation, and the mediator gave the lawyer space to decide in the interests of the accused.<sup>819</sup> On the contrary, one Victim highlights the fact that the mediator was impartial and felt that this gave her the chance to freely express her desires without needing the presence of a lawyer.<sup>820</sup> Another Victim explains that a mediation agreement was not possible, yet that the mediation helped to *stop the hungry lion* (referring to the symbolic power the accused lost when called to mediation by the PPO, and to the interruption of the Victim's *inertia* by submitting a complaint and attending mediation).<sup>821</sup> The symbolic effect of criminal mediation as a limit to the accused was mentioned more than once by Victims.<sup>822</sup>

Some Victims actively try to understand the criminal mediation process.<sup>823</sup> Others, however, accept the criminal mediation process as “the” option given by the PPO<sup>824</sup> and as “the” way to prevent the escalation to trial.<sup>825</sup>

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<sup>807</sup> V-I 1, 011.

<sup>808</sup> V-IwSP, 013; V-I 2, 014.

<sup>809</sup> V-I 2, 014.

<sup>810</sup> V-I 2, 024; V-I 2, 039; V-I 2, 053; V-I 2, 011; V-I 2, 015.

<sup>811</sup> V-I 2, 024.

<sup>812</sup> V-I 2, 039.

<sup>813</sup> V-I 2, 007.

<sup>814</sup> V-IwSP, 013; V-I 1, 013.

<sup>815</sup> V-I 2, 039; V-I 2, 011 (however, by the time of the second interview, she reconsiders hiring a lawyer to request child support).

<sup>816</sup> V-I 2, 039.

<sup>817</sup> V-I 2, 031.

<sup>818</sup> V Male-I 2, 028.

<sup>819</sup> Ibid.

<sup>820</sup> V-I 2, 007.

<sup>821</sup> V Male-I 2, 028.

<sup>822</sup> Ibid.; V-I 1, 053; V-I 2, 011; V-I 2, 015.

<sup>823</sup> V-IwSP, 024.

<sup>824</sup> V-I 1, 011; V-IwSP, 013.

<sup>825</sup> V-I 1, 014; V-IwSP, 013, V-I 1, 013.

Fear is present during and after mediation, though with a reduced level of intensity. Even when Victims express fear before mediation, some explain having a reduced feeling of fear during mediation and afterwards because they experienced a calmer behaviour in the accused.<sup>826</sup> Some Victims express a high level of intensity of fear before mediation because they did not know how the accused would react during the meeting.<sup>827</sup> They feared being subjected to shouting or insults. Criminal mediation in separate rooms is mentioned as a relief for some Victims who choose this option to avoid meeting the accused.<sup>828</sup>

Six Victims mention they experienced civil mediation and had been scheduled for a criminal mediation.<sup>829</sup> In four cases criminal mediations were scheduled, yet never took place.<sup>830</sup> In all cases, the civil mediations took place before criminal mediations. In two cases where criminal mediation took place the accused was still not complying with the agreement by the time of second interviews.<sup>831</sup> In one of the four cases where the criminal mediation did not take place, even when scheduled, the Victim explains that when the divorce was finalized she decided to stop following the criminal complaint, and hopes that her psychologist will continue helping her to learn how to relate with the accused.<sup>832</sup> In another case the Victim missed the criminal mediation because she overslept and explains during the second interview that she does not want to see the accused, and does not see the benefits of mediation.<sup>833</sup> In a final case the Victim attended mediation though the accused did not. In that same case the accused was also not complying with the child support agreement signed at the civil court.<sup>834</sup> This hints at the fact that civil cases dealing with family matters might not prevent a subsequent domestic violence complaint, and criminal mediation might not be enough to enforce non-abusive behaviour.<sup>835</sup>

One Victim recalls experiencing only civil mediation that helped her settle child support and custody.<sup>836</sup> The Victim recalls the way the mediator spoke to the accused about his paternal responsibilities and that it triggered the acceptance of his responsibility.<sup>837</sup> The same Victim explains that the restraining order granted in civil court ended the abusive behaviour of the accused.<sup>838</sup>

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<sup>826</sup> V-IwSP, 053; V-I 1, 053; V-I 2, 053, 15; V-I 2, 015; V-I 2, 007.

<sup>827</sup> V-I 2, 024; V-I 2, 015; V-I 2, 053; V-I 2, 007.

<sup>828</sup> V-I 2, 053; V-I 2, 015; V-I 2, 031.

<sup>829</sup> V-I 1, 031; V-I 1, 007; V-I 2, 045; V-I 1, 022; V-IwSP, 003; V-I 1, 003; V-I 2, 003; V-IwSP, 004; V-I 1, 004.

<sup>830</sup> V-I 2, 045; V-I 1, 022; V-I 1, 003; V-IwSP, 004.

<sup>831</sup> V-I 1, 031; V-I 1, 007.

<sup>832</sup> V-I 2, 045; V-IwSP, 045.

<sup>833</sup> V-I 2, 003.

<sup>834</sup> V-IwSP, 004; V-I 1, 004.

<sup>835</sup> V-I 1, 031; V-I 1, 007.

<sup>836</sup> V-I 2, 035.

<sup>837</sup> Ibid.

<sup>838</sup> Ibid.

### 5.5.5.3. Trial and “the Judge”

Trial seems not to occur often, since none of the Victims experienced criminal trial. On some occasions a date for trial was scheduled, yet never took place either because of a national holiday or because further evidence was required.<sup>839</sup> Five Victims consider a court sentence as the way to solve their problems by the time of first interviews;<sup>840</sup> and “court” and “trial” are associated with and considered as something serious.<sup>841</sup> Some Victims refer to the criminal trial as a phase that activates when others fail (e.g. restraining orders, mediation, probation)<sup>842</sup> and with consequences that might trigger harm to the accused. For example, when OFAVyT explained the trial as being an option, some Victims refused the option by explaining: *I do not want to harm anyone*<sup>843</sup> or *[I do not want to harm] the man I have loved*.<sup>844</sup> Therefore, some Victims might prefer mediation over trial to reduce detrimental consequences for the accused.<sup>845</sup> Other Victims find it unfair to hear that chances for jail sentences are rare and express frustration *because then he may end up killing [them]*.<sup>846</sup> Different Victims consider that the most effective penalty for the accused is to take from them something they really care for (i.e. money).<sup>847</sup> Trial and court are assimilated to instances with the capacity to enforce conduct,<sup>848</sup> yet they can take very long<sup>849</sup> and require time and money.<sup>850</sup>

Even when many domestic violence complaints dealt with by PPO do not reach trial, many Victims experience contact with judges during legal procedures. Judges are mostly mentioned as an institution with the capacity to grant authority within a case, but not as an actor involved in the legal procedure. This is not surprising, considering the organizational structure mentioned in chapter 4.

A group of Victims names judges as an authority for the accused with the capacity to force actions.<sup>851</sup> As explained by a Victim referring to how she experienced the behaviour of the accused after meeting a judge: *I do not know what they talked about, but there is a fear from his side that he knows he does not have to touch me, but he also knows that if he verbally abuses me there are no witnesses*.<sup>852</sup> Other Victims explain that not even the image of a judge deterred the accused from insulting,<sup>853</sup> from not attending court, or simply from ignoring what was said by the judge during a hearing.<sup>854</sup> In these cases Victims

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<sup>839</sup> V-I 1, 001.

<sup>840</sup> V-Q, 003; V-Q, 013; V Male-Q, 028; V-Q, 044; V-Q, 048.

<sup>841</sup> V-I 1, 002; V-I 1, 034; V-I 1, 021.

<sup>842</sup> V-I 2, 003.

<sup>843</sup> V-IwSP, 008.

<sup>844</sup> V-I 2, 044.

<sup>845</sup> V-IwSP, 013.

<sup>846</sup> V-IwSP, 011.

<sup>847</sup> V-I 1, 048; V Male-I 2, 028.

<sup>848</sup> V-I 1, 012; V-I 2, 019.

<sup>849</sup> V-I 2, 019.

<sup>850</sup> V-I 1, 042; V-I 2, 031; V-I 1, 001; V-I 2, 001; V-I 2, 019.

<sup>851</sup> V-I 2, 012; V-I 2, 019; V Male-I 2, 028; V Male-I 1, 028; V-IwSP, 046; V-I 2, 050; V-I 2, 052.

<sup>852</sup> V-I 2, 012.

<sup>853</sup> V-IwSP, 031; V-I 2, 031.

<sup>854</sup> V-IwSP, 052.

were surprised when seeing that the accused were not “influenced” by the presence of a judge.

The presence of a judge is also viewed as an authority for some Victims every time some refer to judges as actors who will *take care* of their complaints, require some actions (e.g. require the presence of a lawyer), and concretize other actions (e.g. restraining orders).<sup>855</sup> In this sense, some Victims consider that the solutions to their problems depend on a judge.<sup>856</sup>

Other Victims perceive judges as actors who do not get involved in their reality and hence do not understand their situation. Judges do not “walk in their shoes” according to the members of this group. As explained by one Victim: [Judges] *have their lives, their families, and they are not interested about our lives*.<sup>857</sup> It is also perceived that Victims might use the word “judge” without knowing for certain whether the person they spoke with at the civil court was indeed a judge.<sup>858</sup>

### 5.5.6. Consequences of the Complaints

Most Victims express a feeling of confidence at the time they submit complaints against the accused. Some Victims gain, when submitting complaints, first perceptions on their own capacity to make decisions for themselves. Furthermore, complaints have as a first consequence the chance for Victims to witness how the reality that they were living is perceived by others. Submitting complaints sometimes works as an eye-opener. As mentioned by one interviewee:

*Interviewer: How did you feel after submitting the complaint?*

*Interviewee: No. I liked it a lot, because it surprised me.*

*Interviewer: It surprised you?*

*Interviewee: Yes. It surprised me that it came out that way. And it made me feel more confident [about myself], and about what was that I wanted.*

*Interviewer: In which sense you felt ‘more confident’?*

*Interviewee: In my decisions. Up to here I tolerate, up to here I do not. This I can stand, this I cannot.*

*Interviewer: It is as if it gave you more confidence to make decisions or more confidence in saying ‘this I want, this I do not want’?*

*Interviewee: Both, because submitting a complaint implies also making a decision.*<sup>859</sup>

Victims were asked about the consequences of complaints in first and second interviews. Some Victims express consequences in terms of feelings, others in terms of developments in their complaints, and others in terms of the accused. The Victims

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<sup>855</sup> V-I 1, 012; V-I 2, 026; V-I 2, 033; V-I 1, 034; V-I 2, 037; V-I 1, 038; V-I 2, 044; V-I 1, 044; V-I 2, 050; V-I 2, 052; V-I 1, 013; V-I 2, 015; V-I 1, 016.

<sup>856</sup> V-I 1, 003; V-I 1, 017; V-I 1, 026; V-I 2, 034; V-I 1, 037.

<sup>857</sup> V-I 2, 007; V-I 2, 019.

<sup>858</sup> V-Q, 006.

<sup>859</sup> The Victim lives with the accused by the time of the second interview. She had, however, been separated the first two months after submitting the complaint, V-I 2, 051.

who express positive feelings mention tranquillity,<sup>860</sup> trust in own capacity,<sup>861</sup> and support;<sup>862</sup> while the Victims who express negative feelings mention feeling bad,<sup>863</sup> nervous,<sup>864</sup> and afraid.<sup>865</sup>

Victims who express a feeling of tranquillity after submitting complaints relate tranquillity to a chance to: perform ordinary activities,<sup>866</sup> enforce wanted rights,<sup>867</sup> live by themselves and feel safe in and outside of their houses,<sup>868</sup> overcome the situation,<sup>869</sup> give a start to the search for a change,<sup>870</sup> and receive help and solve problems.<sup>871</sup> However, delays in the judicial system are viewed as obstacles to the feeling of tranquillity.<sup>872</sup> As a pattern, all these Victims relate complaints with a manifestation of an action of which they are part.

A Victim who expresses tranquillity as the main effect of the complaint continues prioritizing this feeling after six months.<sup>873</sup> During the second interview, this Victim expresses tranquillity as an increasing feeling that starts from feeling bad to feeling able to overcome the problem.<sup>874</sup> However, this Victim lost contact with the accused after the complaint was submitted.<sup>875</sup> The group that expresses tranquillity as a feeling that was regained during the six-month period between first and second interviews can be divided into those who ended the relationship and those who continued living with the accused. Those who ended the relationship relate the feeling of tranquillity to having been able to solve the entire problem and to have the chance to live in peace,<sup>876</sup> or to having been able to solve some aspects of the problem with the support of the judicial system.<sup>877</sup> Those who continue living with the accused relate the feeling of tranquillity to having been able to: (i) gain control over problems by understanding the roots and their responsibility (i.e. alcohol addiction),<sup>878</sup> (ii) learn how to handle abusive situations,<sup>879</sup> and (iii) become aware of resources to turn to for

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<sup>860</sup> V-I 1, 008; V-I 1, 017; V-IwSP, 025; V-I 1, 025; V-I 2, 006; V-I 2, 017; V-I 2, 021; V-I 2, 027; V-I 2, 029; V-I 2, 035; V-I 2, 037; V-I 2, 038; V-I 2, 039; V-I 2, 047; V-I 2, 054.

<sup>861</sup> V-I 1, 008; V-I 1, 013; V-I 1, 017; V-I 1, 016; V-I 1, 024; V Male-I 1, 028; V-I 1, 030; V-I 2, 026; V-I 1, 027; V-I 2, 045; V-I 2, 052; V-I 2, 027; V-I 2, 047; V-I 2, 051; V-I 2, 024.

<sup>862</sup> V-I 1, 022; V-I 1, 023; V-I 1, 024; V-I 2, 037; V-I 2, 045.

<sup>863</sup> V-I 1, 014; V-I 1, 015; V-I 1, 026; V-I 2, 023; V-I 2, 029; V-I 2, 044.

<sup>864</sup> V-I 1, 004.

<sup>865</sup> V-IwSP, 012; V-I 1, 020, June 27, 2013; V-I 2, 006; V-I 2, 015; V-I 2, 034; V-I 2, 041; V-I 2, 050; V-I 2, 052.

<sup>866</sup> V-IwSP, 008.

<sup>867</sup> V-I 1, 017.

<sup>868</sup> Ibid.

<sup>869</sup> V-I 1, 025; V-IwSP, 025.

<sup>870</sup> V-I 1, 022.

<sup>871</sup> V-I 1, 024.

<sup>872</sup> V-I 1, 022; V-I 1, 024.

<sup>873</sup> V-I 2, 017.

<sup>874</sup> Ibid.

<sup>875</sup> Ibid.

<sup>876</sup> V-I 2, 026; V-I 2, 021; V-I 2, 039.

<sup>877</sup> V-I 2, 006; V-I 2, 035; V-I 2, 038.

<sup>878</sup> V-I 2, 027.

<sup>879</sup> V-I 2, 037.

help if something happens.<sup>880</sup> In the last scenario, rights awareness becomes a necessary element of rights enablement.

One Victim expresses, during the second interview, that she feels more tranquil, not because she submitted a complaint, but because she needed to file away the complaint. She says that normally she feels tranquil and that she does not know why she submitted the complaint at first.<sup>881</sup> This case is that of a Victim from Bolivia who expresses the same pattern as Victims from that country experiencing violence and not being able to abandon the environment. During second interviews the Victim repeats the same phrase over and over and requests the filing of the complaint. The interview lasted fifteen minutes because it was clear that the Victim, even though verbally agreeing to talk, was unable to freely express herself and her statements had many contradictions. In the words of the interviewee:

*Interviewer: What did you learn from this experience?*

*Interviewee: I am tranquil, happy. I do not know [how] to complain, we never fight, this time I do not know what happened to me, I denied, I cannot explain why I [submitted the] complaint, because we cannot fight, I do not know what happened with my husband.<sup>882</sup>*

A group of Victims says that complaints allow them to gain trust in their own capacity to handle problems. This trust in their own capacity is mentioned during first and second interviews by different Victims. Trust in their own capacity relates to: (i) receiving instructions by providers<sup>883</sup> and psychologists<sup>884</sup> on how to communicate with the accused; (ii) being more patient in the process to solve problems and become aware of the complexities of the legal procedure,<sup>885</sup> yet persevering in requesting a response from organizations;<sup>886</sup> (iii) being able to talk and express their own desires and gain strength to place limits on the accused;<sup>887</sup> and (iv) being able to understand their own reality and change accordingly.<sup>888</sup> The feeling of being supported is mentioned by a group of Victims as the main effect of filing complaints. This feeling is related to being heard and knowing that organizations exist.<sup>889</sup> One Victim relates

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<sup>880</sup> V-I 2, 047.

<sup>881</sup> V-I 2, 054.

<sup>882</sup> Ibid.

<sup>883</sup> V-I 1, 008; V-I 1, 023; V-IwSP, 030.

<sup>884</sup> V-I 1, 017; V-IwSP, 030.

<sup>885</sup> V-I 2, 052 (the Victim says, “Because the judicial system is not always what it seems to be. For example, I thought that the judicial system would be straight and direct and do everything fast”); V-I 1, 024; V Male-I 1, 028.

<sup>886</sup> V Male-I 1, 028; V-I 2, 045; V-I 2, 047.

<sup>887</sup> V-I 2, 024; V-I 2, 026; V-I 1, 027; V-I 2, 027; V-I 2, 051.

<sup>888</sup> V-I 1, 016 (the Victim says, “I received some instructions, that is where I got the space to become aware of my own reality, ... for me it was the same as the previous years, but then when I came to Lavalley [i.e. referring to OVD], when I submitted the complaint I told them ‘well this is my life.’ And there I was told to look for places where I really feel good, that I need to feel good with myself. Because the life that he offers me is not good. So that is what I had in consideration to say ‘No.’ If they want to help me, maybe I never realized it, and I accepted the help. And that is why I come here and all of that. And it made me [feel better] to come here and become aware of the reality I live”); V-I 1, 013; V-I 2, 045.

<sup>889</sup> V-I 1, 022; V-I 1, 023; V-I 1, 024.

the complaint to feeling protected by explaining that at the moment of the submission of complaints, *You believe that you are more protected.*<sup>890</sup>

Some Victims felt bad, afraid, or nervous as an effect of their complaints. In first interviews, three Victims felt bad when submitting complaints, and relate the feeling to exercising a legal action against a loved one.<sup>891</sup> Two of those Victims consider also that the accused has an alcohol addiction and see the accused as someone who is sick and needs to recover.<sup>892</sup> One of those two Victims continues with the complaint even though knowing that it is not the most effective means to solve the addiction, yet that is the only option she found.<sup>893</sup> In second interviews, after six months, a different group of Victims expresses feeling bad during the legal procedure. These Victims feel bad because they pursue complaints against loved ones,<sup>894</sup> while one Victim mostly feels bad because she trusted in the promise to change by the accused and then he left her for another woman.<sup>895</sup> This Victim says she learned that she cannot trust in anyone, only in God.<sup>896</sup> Victims who express feeling afraid say that the feeling persists after submitting complaints.<sup>897</sup> After six months another group of Victims admits to having a constant feeling of fear, in and outside of their homes.<sup>898</sup> As a reaction to that fear they describe taking security precautions, such as being more careful when going in and out of their homes and works,<sup>899</sup> or being more alert to other signs of potential risks to their safety.<sup>900</sup> A Victim expresses feeling nervous, though the first interview coincides with having to encounter the accused and the mother at the PPO.<sup>901</sup>

### 5.5.7. Obstacle Encountered by Victims

Time is an obstacle that Victims encounter to enabling the exercise of rights. Some Victims explain that the combination of requests (e.g. complying with appointments at the PPO) and other personal obligations (e.g. doctors' appointments) push them towards dropping their complaints.<sup>902</sup> Other Victims express wanting to drop their complaints because they do not like to approach organizations.<sup>903</sup>

After six months a group of Victims expresses frustration for the number of activities they had to perform in order to comply with judicial requests that result from complaints. They stopped attending appointments,<sup>904</sup> delayed the legal procedure,<sup>905</sup>

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<sup>890</sup> V-I 2, 047.

<sup>891</sup> V-I 1, 014; V-I 1, 015; V-I 1, 026.

<sup>892</sup> V-I 1, 015; V-I 1, 014.

<sup>893</sup> V-I 1, 014.

<sup>894</sup> V-I 2, 023; V-I 2, 029.

<sup>895</sup> V-I 2, 044.

<sup>896</sup> Ibid.

<sup>897</sup> V-I 1, 012; V-I 1, 020, June 27, 2013; V-I 1, 017.

<sup>898</sup> V-I 2, 006; V-I 2, 015; V-I 2, 041; V-I 2, 050; V-I 2, 052.

<sup>899</sup> V-I 2, 006.

<sup>900</sup> V-I 2, 041.

<sup>901</sup> V-I 1, 004.

<sup>902</sup> V-I 1, 002.

<sup>903</sup> V-IwSP, 004; V Male-I 1, 028.

<sup>904</sup> V-I 2, 001; V-I 2, 043; V-I 2, 045.

<sup>905</sup> V-I 2, 033; V-I 2, 052; V-I 2, 006; V-I 2, 012.



or solved their problems only partially.<sup>906</sup> Other Victims even after six months comply with and request actions. They request actions by calling sporadically to check on the status of their complaints.<sup>907</sup> Another Victim expresses feeling happy after receiving a call from the PPO with a concrete option for a solution (e.g. mediation), though she decided not to take the offered option after being informed that it is mostly to the interest of the accused,<sup>908</sup> while other Victims cannot perceive concrete actions that took place during the six-month period.<sup>909</sup> Some Victims recall the steps followed during the six-month period by simply enumerating the compliance with judicial requests.<sup>910</sup> One Victim expresses that her complaint was referred to the federal justice system due to the lack of jurisdiction of the PPO and never heard again from the federal justice system.<sup>911</sup> However, this Victim was not eager to continue with the case because the threats stopped. This example shows how legal procedures and people sometimes take different paths. Annex 11 in its column titled “Is the problem solved in the eyes of Victims?” also gives evidence on how conflicts dealt with by the judicial system and problems dealt with by Victims do not run in parallel. On many occasions, Victims view their problems solved and the legal procedure is still on-going, and *vice versa*.

Twenty-four Victims answered, during second interviews, a question exploring the extent to which they found it difficult to attend meetings scheduled by the PPO. More than half of those Victims state not finding it difficult and highlight the flexibility of the PPO to adjust to their schedules.<sup>912</sup> The Victims who found it difficult mention the compliance with appointments in combination with their regular schedule and the difficulty of answering questions related to violence.<sup>913</sup>

### 5.5.8. Effects of Complaints on the Accused

#### 5.5.8.1. General Perceptions

Victims explain that their relationship with the accused changed after complaints were submitted, with the exception of one Victim who states that the situation has not changed at all.<sup>914</sup> Some Victims who lived with the accused before submitting complaints continue living with the accused and perceive some positive changes in their relationships.<sup>915</sup> Some other Victims separated for a time period, and then returned to live with the accused;<sup>916</sup> while another Victim separated, yet continues

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<sup>906</sup> V-I 2, 039; V-I 2, 041.

<sup>907</sup> V-I 2, 050; V-I 2, 053.

<sup>908</sup> V-I 2, 006.

<sup>909</sup> Ibid.; V-I 2, 019; V-I 2, 054.

<sup>910</sup> V-I 2, 007; V-I 2, 011; V-I 2, 021; V Male-I 2, 028; V-I 2, 038; V-I 2, 006; V-I 2, 023.

<sup>911</sup> V-I 2, 034.

<sup>912</sup> V-I 2, 001; V-I 2, 006; V-I 2, 024; V-I 2, 026; V-I 2, 033; V-I 2, 037; V-I 2, 035; V-I 2, 034; V-I 2, 038; V-I 2, 041; V-I 2, 044; V-I 2, 051; V-I 2, 053; V-I 2, 045.

<sup>913</sup> V-I 2, 003; V-I 2, 050; V-I 2, 043; V-I 2, 039; V-I 2, 031; V-I 2, 027; V-I 2, 007; V Male-I 2, 028; V-I 2, 019; V-I 2, 012.

<sup>914</sup> V-I 2, 019.

<sup>915</sup> V-I 1, 020, June 27, 2013; V-IwSP, 020; V-I 1, 026; V-I 2, 012; V-I 2, 014; V-IwSP, 012.

<sup>916</sup> V-I 2, 051; V-I 2, 027; V-I 2, 043; V-I 2, 037.

sharing the workplace.<sup>917</sup> A Victim stopped having contact with the accused and shifted her focus to the payment of debts.<sup>918</sup> A group that was not living with the accused lost contact and does not know whether the accused ever knew about the existence of the complaints.<sup>919</sup> However, Victims who have children with the accused, with the exception of one, continue having contact with them.<sup>920</sup> Victims with shared property also continue having contact with the accused.<sup>921</sup> Some accused contacted the Victims via e-mail or in person, when separated, to ask them to withdraw the complaints.<sup>922</sup>

Complaints also have effects on the family environment and especially on children. In some cases a complaint within a family structure negatively affects the performance of children in school<sup>923</sup> or leads to loneliness because of the close relationship the children have with the accused.<sup>924</sup> In one case a Victim expresses that the problem did not change at all and that it was causing problems for the child and herself.<sup>925</sup> The male Victim explains that the relationship with his daughters changed for a while because they could not accept that he had submitted a complaint against their mother,<sup>926</sup> while other Victims explain that complaints had no effect on the children.<sup>927</sup> A Victim explains that her daughters are doing better at school since the time the accused left the household because they now live in a tranquil atmosphere.<sup>928</sup> Some Victims could preserve the relationship between father and children even when the accused was living with another partner.<sup>929</sup> In addition, other Victims express needing to take care of everything now that the accused are no longer in the household, needing to prolong their day shifts to be able to handle the children, the home, and work.<sup>930</sup> This creates a feeling of exhaustion that is difficult to sustain in the long term for Victims. In another situation a Victim explains that she always took care of everything and therefore, now that the accused is not around, the family can at

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<sup>917</sup> V-I 1, 016.

<sup>918</sup> V-IwSP, 029.

<sup>919</sup> V-I 1, 025; V-I 2, 001; V-I 2, 021; V-I 2, 033; V-I 2, 047; V-I 1, 021; V-I 2, 041.

<sup>920</sup> V-I 2, 054; V-I 2, 007; V-I 2, 015; V-I 2, 017; V-I 2, 034.

<sup>921</sup> V-I 2, 044.

<sup>922</sup> V-I 1, 006; V-I 1, 013.

<sup>923</sup> V-IwSP, 004.

<sup>924</sup> V-IwSP, 012; V-I 2, 054.

<sup>925</sup> e.g. a Victim explains that the problem persists and that her child is having problems because he does not want to be with the Victim and suffers from insomnia. Moreover, the Victim expresses feeling depressed and not wanting to do anything about it. When asked whether she was receiving help or knew where to seek help, she said, "No," V-I 2, 044.

<sup>926</sup> e.g. the Victim talks often with his daughters and receives support from his psychologist to plan how to handle the situation, V Male-I 2, 028.

<sup>927</sup> e.g. a Victim explains that her children are fine because they are old enough to understand, V-I 1, 013; another Victim explains that one of her sons went back to Bolivia with the father (who is not the accused) and is happier, V-I 2, 029; a different Victim explains that the child understood because she explained that the mother would be hospitalized for a while so as to be able to take care of him properly, V-I 2, 038.

<sup>928</sup> V-I 2, 039.

<sup>929</sup> V-I 2, 026.

<sup>930</sup> V-I 1, 026 (e.g. the Victim explains that very often she wakes up at 4 a.m. and by 6 p.m. she is still unable to take a break); V-I 2, 017.

least be tranquil.<sup>931</sup> Some Victims who no longer live with the accused say, during second interviews, that they had to increase their working hours.<sup>932</sup>

Some Victims stay with the accused after submitting complaints based on *custom* [and] *routine*.<sup>933</sup> Victims living with alcoholics or drug addicts are motivated to stay for the well-being of the accused.<sup>934</sup> They observe that the accused need external help to recover, and most consider the addiction a justification for the violent behaviour, considering that complaints do not fully depict their problems. Other Victims take the addiction as an impediment to improving things, and decide to separate. For example, in one case a Victim decided to separate only after five years of violence, consultations with Alcoholics Anonymous, submission of a complaint, receiving multidisciplinary assistance from OFAVyT, and five visits to a psychologist.<sup>935</sup> In another case a Victim separated after two years of violence and of repeated threats, and after sensing that their relationship presented a negative example for their children.<sup>936</sup> These examples show that even when the external support of the judicial system might not be considered a motivation for the submission of complaints, it can be a motivation to perform future actions to solve problems. Victims who submitted second complaints during the six-month period say that the motivation was to place another limit on the accused after observing that abusive behaviours ceased after first complaints.<sup>937</sup>

#### 5.5.8.2. *Categories of Perceptions*

Victims are asked how they perceive the behaviours of the accused have changed after the submission of complaints. Ten categories derive from the answers, and initial hints are offered on the effects that complaints may have on the accused (annex 10). Further research needs to be conducted with respect to the accused in order to assess the validity of these results. In those categories, Victims are: (1) unsure whether the accused ever received notice of complaints and lost contact with the accused, and this group shows cases where Victims lost contact with the accused without knowing whether it was triggered by complaints; (2) unsure whether the accused ever received the complaints, yet contact persisted; (3) aware of the fact that the accused were notified about complaints, yet perceive no changes in the behaviour of the accused; (4) focused on different problems after complaints were submitted; (5) sure that the accused stopped the abusive behaviour after the submission of complaints, though they doubt the sustainability of the cessation of the behaviour; (6) promised by the accused that they will attend psychological therapy or treatment for the addiction; (7) able to perceive that after the complaints the abuses stopped; (8) able to perceive negative changes in the accused after the complaints were submitted; (9) able to perceive that the accused knew of the complaints, yet the accused did not feel

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<sup>931</sup> V-I 1, 009.

<sup>932</sup> V-I 2, 017; V-I 2, 043.

<sup>933</sup> V-I 1, 013.

<sup>934</sup> V-I 1, 014.

<sup>935</sup> V-I 1, 016.

<sup>936</sup> V-I 1, 021.

<sup>937</sup> V-I 2, 001.

threatened; or (10) able to perceive no changes in the behaviour of the accused after the submission of complaints.

Annex 10 reports a detailed breakdown of the ten categories for the fifty-four Victims. That annex also shows the transition in the behaviour of the accused from first to second interviews, hence during a six-month period. The annex therefore reports for each category in a first column the perceptions of Victims in first interviews, and in a second column reports on the perception of the Victims in second interviews. All information in the annex reflects the effects that complaints have on the accused in the eyes of the Victims.

## 5.6. Rights Enforcement

This sub-section analyses how Victims enforce their rights by first analysing how Victims view their problems as being solved and the type of preventive measures mentioned by Victims (5.6.1.). It then analyses what obstacles Victims encounter to enforce rights (5.6.2.) and ends with a note on accountability in order to understand the extent to which Victims can participate in holding accountable those capable of enforcing rights (5.6.3.).

### 5.6.1. Problems and Measures

The way Victims assess their problems as solved do not always coincide with the time the PPO files their complaints, as shown in annex 10. This sub-division presents results on the relation between complaints and problems, and on the preventive measures Victims recall as being enforced after complaints.

#### 5.6.1.1. Criminal Complaints and Problems of Victims

Twenty-five out of the fifty-four criminal complaints were filed away by the time of the second interview. Those twenty-five criminal complaints that were filed away can be divided into four groups. (1) Fourteen criminal complaints were filed away due to lack of evidence.<sup>938</sup> Most Victims from this group perceive that their problems are solved,<sup>939</sup> solved but with doubtful sustainability,<sup>940</sup> or partially solved.<sup>941</sup> One Victim, however, states that her problem is not solved;<sup>942</sup> and in two situations it was not possible to collect information from Victims because second interviews did not take place.<sup>943</sup> (2) Eight criminal complaints were filed away with a criminal mediation agreement.<sup>944</sup> Victims from this group, with the

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<sup>938</sup> V-IwSP, 001; V-IwSP, 002; V-IwSP, 005; V-IwSP, 014; V-IwSP, 023; V-IwSP, 025; V-IwSP, 027; V-IwSP, 030; V-IwSP, 035; V-IwSP, 042; V-IwSP, 045; V-IwSP, 046; V-IwSP, 051; V-IwSP, 054.

<sup>939</sup> V-I 1, 002; V-I 1, 005; V-I 1, 025; V-I 2, 035; V-I 2, 054.

<sup>940</sup> V-I 2, 001; V-I 2, 023; V-I 2, 027.

<sup>941</sup> V-I 2, 014; V-I 1, 042; V-I 2, 051.

<sup>942</sup> V-I 2, 045.

<sup>943</sup> V-I 030; V-I 046.

<sup>944</sup> V-IwSP, 010; V-IwSP, 011; V-IwSP, 013; V-IwSP, 015; V-IwSP, 024; V-IwSP, 031; V-IwSP, 039; V-IwSP, 053.

exception of one,<sup>945</sup> consider their problems solved to some extent by the time of second interviews.<sup>946</sup> (3) Three criminal complaints were filed away due to the nature and importance of the facts. All Victims in this third group consider their problems solved,<sup>947</sup> and information on one Victim could not be obtained.<sup>948</sup>

Twenty-six out of the 54 criminal complaints remained open by the time of second interviews. Those 26 criminal complaints can be divided into 5 groups according to the activities that are pending, and those activities are: (1) a criminal mediation request from the prosecutors,<sup>949</sup> (2) a trial request from the prosecutors,<sup>950</sup> (3) an on-going investigation,<sup>951</sup> (4) probation for the accused,<sup>952</sup> and (5) complaints re-opened due to breach of mediation agreements<sup>953</sup> or occurrences of subsequent abuses.<sup>954</sup> The 26 criminal complaints that remained opened at the time of second interviews, furthermore, can be sorted by indicating that: 11 Victims consider their problems not solved;<sup>955</sup> 4 Victims consider their problems partially solved;<sup>956</sup> 5 Victims consider their problems solved;<sup>957</sup> and 3 Victims consider their problems solved, yet they doubt sustainability.<sup>958</sup> Information on 3 Victims could not be obtained.<sup>959</sup>

Three out of the fifty-four criminal complaints are identified as “unknown” because they were filed away at the PPO, yet transferred to the federal justice system. In these last three cases Victims consider their problems solved.<sup>960</sup>

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<sup>945</sup> V-I 2, 031.

<sup>946</sup> V-I 1, 010; V-I 2, 011; V-I 2, 013; V-I 2, 015; V-I 2, 053; V-I 2, 024; V-I 2, 039.

<sup>947</sup> V-I 2, 041; V-I 2, 047.

<sup>948</sup> V-I 1, 032.

<sup>949</sup> V-IwSP, 003; V-IwSP, 004; V-IwSP, 019; V-IwSP, 021; V-IwSP, 022; V-IwSP, 033; V-IwSP, 049.

<sup>950</sup> V-IwSP, 050; V-IwSP, 008; V-IwSP, 009; V-IwSP, 017; V-IwSP, 018; V-IwSP, 020; V-IwSP, 036; V-IwSP, 037; V-IwSP, 044.

<sup>951</sup> V-IwSP, 052; V-IwSP, 006; V Male-IwSP, 028; V-IwSP, 029; V-IwSP, 038; V-IwSP, 040; V-IwSP, 043.

<sup>952</sup> V-IwSP, 016.

<sup>953</sup> V-IwSP, 007.

<sup>954</sup> V-IwSP, 012.

<sup>955</sup> V-I 2, 019; V-I 2, 033; V-I 2, 049; V-I 2, 050; V-I 2, 018; V-I 1, 020, June 27, 2013; V-I 2, 044; V-I 2, 012; V-I 2, 007; V Male-I 2, 028; V-I 2, 052.

<sup>956</sup> V-I 1, 004; V-I 2, 006; V-I 2, 038; V-I 1, 016.

<sup>957</sup> V-I 2, 003; V-I 2, 021; V-I 2, 037; V-I 2, 029; V-I 2, 043.

<sup>958</sup> V-I 1, 022; V-I 1, 009; V-I 2, 017.

<sup>959</sup> V008; V036; V040.

<sup>960</sup> V-I 2, 026; V-I 1, 048; V-I 2, 034.

### 5.6.1.2. Problems of Victims Solved

Is the problem solved in the eyes of Victims?

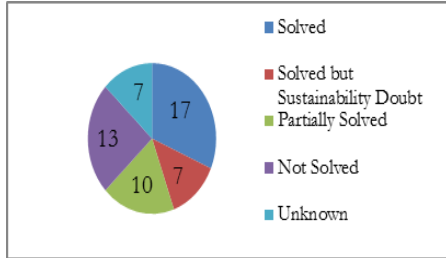


Figure 7. Problems Solved Victims

Is the problem solved in the eyes of the PPO?

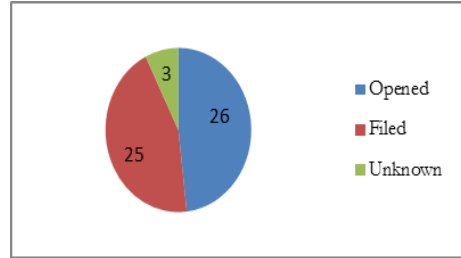


Figure 8. Problems Solved PPO

Victims who consider their problems partially solved, regardless of whether the cases are open or filed away, say that in most situations the direct issues that triggered the criminal complaints were solved. However, civil aspects in relation to children are normally mentioned as points that remain unsolved.<sup>961</sup> Moreover, a Victim considers that a monetary debt from the accused is still pending to be resolved;<sup>962</sup> while another Victim mentions that even when perceiving the problem solved she preserves a feeling of fear and takes security precautions in order to feel safe.<sup>963</sup> An exception to having problems partially solved is found in Victims who say that alcohol addiction is unresolved because of a direct relation that these Victims establish between addictions and abuse.<sup>964</sup>

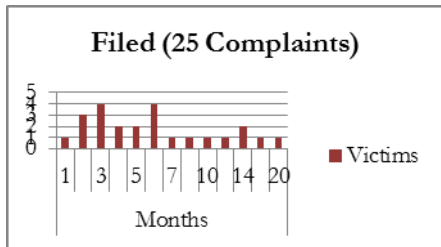


Figure 9. Complaints Filed Away

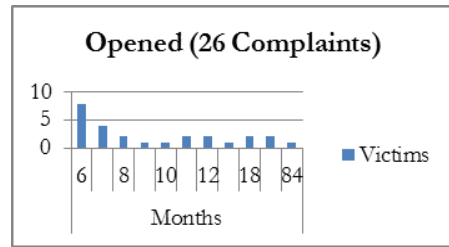


Figure 10. Complaints Opened

Twenty-five criminal complaints were filed away and twenty-six remained open by the time of second interviews. Most filed criminal complaints had reached that status before the completion of one year. Open criminal complaints have been in that status for less than one year, with the exception of seven criminal complaints that have been opened for a longer period. Time to pursue complaints by Victims encompasses the period between the date first complaints were submitted and the

<sup>961</sup> e.g. a Victim wants to review the child support and visitation agreement, V-I 1, 004; another Victim wants to review the visitation agreement, V-I 2, 039; a different Victim wants to review the child support agreement, V-I 2, 011.

<sup>962</sup> V-I 2, 006.

<sup>963</sup> V-I 1, 042.

<sup>964</sup> V-I 1, 010; V-I 2, 014; V-I 1, 016; V-I 2, 038.

registration of the last available action. The best case scenario (i.e. a Victim considers a problem solved and the judicial system files away that complaint) requires between two months and one year and a half.<sup>965</sup> This analysis is extracted from legal documents and information provided by Victims. Errors are certain because cases are not centralized, which means that previous complaints might have been submitted by Victims in other courts or access points and other actions might have taken place, but might not have been updated.

### 5.6.1.3. *Measures*

Twenty-five Victims mention obtaining a restraining order either from the civil court<sup>966</sup> or the PPO.<sup>967</sup> For some Victims restraining orders give them a feeling of tranquillity, yet this is not mentioned frequently. Three Victims mention having a panic-button<sup>968</sup> and view it as a tool contributing to their tranquillity. Some Victims who experienced criminal mediation recall receiving follow-up calls to ascertain whether agreements were being complied with. These follow-up calls are viewed positively by Victims, except for the Victims who reconciled or consider that the problem is the alcohol addiction and not the violence.

Annex 11 offers further information on: (i) dates first complaints were submitted (as available in legal documents at the PPO), with the dates of first and second interviews, and the dates complaints were filed away; (ii) measures taken by the judicial system and Victims to enforce conflict resolution; and (iii) problems that are solved in the eyes of Victims and in the criteria of the PPO. Information derives from data gathered during interviews and the analysis of legal documents. Omissions of facts are certain because neither the legal documents nor the Victims provide full information. Annex 11 helps validate the argument that many times decisions of the judicial system and decisions of Victims follow different paths, yet they sometimes meet.

### 5.6.2. **Obstacles to Respond to Judicial Requests**

Victims address, during first and second interviews, obstacles they encounter in responding to judicial requests. Employment, time, family obligations, money, type of assistance, and notifying the accused were the obstacles mentioned, and are analysed below.

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<sup>965</sup> Less than one year: V002 (approx. 2 months); V013 (approx. 4 months); V024 (approx. 4 months); V035 (approx. 2 months); V047 (approx. 2 months); V053 (approx. 6 months); V054 (approx. 10 months). More than one year: V005 (approx. 1 year and 2 months); V025 (approx. 1 year and 7 months).

<sup>966</sup> V-I 1, 002; V-I 1, 003; V-I 1, 007; V-I 1, 008; V-I 1, 010; V-I 1, 012; V-I 1, 015; V-I 1, 017; V-I 1, 023; V-I 1, 030; V-I 1, 033; V-I 1, 034; V-I 1, 035; V-I 1, 039; V-I 1, 040; V-I 1, 042; V-I 1, 044; V-I 1, 045; V-I 1, 046; V-I 1, 048; V-I 1, 049; V-I 1, 052; V-I 1, 053.

<sup>967</sup> V-I 1, 006; V-I 1, 050.

<sup>968</sup> V-I 1, 017; V-I 1, 042; V-I 1, 044.

### 5.6.2.1. Employment

Losing working hours to comply with judicial requests is mentioned by a group of Victims as becoming a bureaucratic barrier to overcome.<sup>969</sup> The hours lost become for some Victims an economic detriment, especially for Victims who are self-employed.<sup>970</sup> One Victim expresses losing her employment due to the number of hours of time off she had to take in order to comply with legal requests.<sup>971</sup> Two different Victims express that complaints affected their work dynamics because most of the paperwork needs to be done during working hours<sup>972</sup> and they needed to request leave.<sup>973</sup> Another Victim is aware of the hours lost only during the interview. She explains that until that moment she never thought about the time spent and hours lost at work, but with reflection she realizes that it demands many resources to comply with all requests. The Victim says: [It takes a lot because you are asked to] *go to this place, bring this*.<sup>974</sup> A Victim explains delaying the submission of the complaint because she knew that by filing the complaint she would miss working hours, and there would be a risk of losing her employment.<sup>975</sup> Another Victim explains that it was not costly for her because she is unemployed and therefore has flexibility.<sup>976</sup>

A group of Victims explains that even when complaints demand an additional activity to take care of during working hours, the characteristics of the employment allow them to comply with no further complications. For example, the male Victim explains not having a problem to reschedule because he works for a private company and has a flexible schedule.<sup>977</sup> Other Victims highlight that formal employments allow them to ask for permission without losing hours, yet in all cases they need to explain to their bosses why they need to request leave.<sup>978</sup> Other Victims explain not having a problem because they were able to schedule meetings with the PPO after working hours<sup>979</sup> or express that they work in night shifts.<sup>980</sup>

The physical proximity of the PPO to the home or employment place is perceived by one Victim as determinant in complying with the employment and judicial requests. This Victim explains that by the time the complaint was submitted she lived three blocks away from the PPO and therefore it was not a problem to comply with requests. However, by the time of the second interview, it was a problem since she had moved farther away from the PPO.<sup>981</sup> A different Victim balanced the options

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<sup>969</sup> V-I 1, 015; V-I 2, 003; V-I 2, 006; V-I 2, 012; V-I 2, 019; V-I 2, 033; V-I 2, 035; V-I 2, 034; V-I 2, 044; V-I 2, 052; V-I 2, 053; V-I 1, 016; V-I 1, 021.

<sup>970</sup> V-I 2, 006; V-I 2, 012; V-I 2, 033; V-I 2, 003.

<sup>971</sup> V-I 2, 019.

<sup>972</sup> V-I 1, 021; V-I 2, 027.

<sup>973</sup> V-I 1, 050.

<sup>974</sup> V-I 2, 031.

<sup>975</sup> V-I 1, 015.

<sup>976</sup> V-I 2, 051.

<sup>977</sup> V Male-I 2, 028.

<sup>978</sup> V-I 2, 034; V-I 2, 035; V-I 2, 045.

<sup>979</sup> V-I 2, 037; V-I 2, 045.

<sup>980</sup> V-I 2, 038.

<sup>981</sup> V-I 2, 041.



and explains that time and money do not surpass her desire to give an end to the problem.<sup>982</sup>

### 5.6.2.2. Time

Time is the main element that Victims mention as making the legal procedure “not easy.” Victims explain that they need to incorporate the judicial requests into their schedules (e.g. work, children, medical appointments, and household).<sup>983</sup> Victims express having to spend time at the organizations and attend referrals. For example, in terms of the time spent to comply with judicial requests, they report:

- 2 days<sup>984</sup>
- minimum 4 hours<sup>985</sup>
- approximately 3 hours<sup>986</sup>
- I was easily 5 hours waiting to be assisted<sup>987</sup>
- the entire process takes 27 hours<sup>988</sup>
- it was almost 48 hours of going around<sup>989</sup>
- I have been there 12 hours<sup>990</sup>
- I was 2 hours and a half waiting<sup>991</sup>
- it is a waste of time, mostly for the time you are waiting for someone to arrive<sup>992</sup>
- you are there 1 hour and a half, 2 hours and wish to be over soon<sup>993</sup>
- from 9 a.m. until 4 p.m.<sup>994</sup>
- we were there for a while, 20 minutes, [police officers] took my information, his information and then said “Ms., up to here we accompany you, now you have to call 911”<sup>995</sup>
- that day [i.e. the day she submitted the complaint] I had to go everywhere<sup>996</sup>
- I left early in the morning and came back at midnight<sup>997</sup>
- approximately 3 hours<sup>998</sup>
- I did not have to wait at all, I do not know if it was because I went at night<sup>999</sup>

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<sup>982</sup> V-I 2, 027.

<sup>983</sup> V-I 2, 007; V-I 1, 002; V-I 1, 034; V-I 1, 050.

<sup>984</sup> Referring to the time spent at OVD (including going to civil court to obtain the restraining order), V-I 1, 030; and, V-I 1, 046.

<sup>985</sup> Referring to OVD, V-I 1, 016.

<sup>986</sup> Referring to the police station, V-I 1, 021.

<sup>987</sup> V-I 1, 024.

<sup>988</sup> Referring to how long it takes her to start a domestic violence case for her clients; and she considers it from the moment they go to OVD to submit complaints until the moment they deliver restraining orders at the police stations, V-I 1, 032.

<sup>989</sup> Referring to the time from the moment she went to OVD until she received the restraining order, V-I 1, 046.

<sup>990</sup> Referring to the time spent at OVD, V-I 2, 006.

<sup>991</sup> Referring to the waiting time when at an appointment at the PPO, V-I 2, 031.

<sup>992</sup> Referring to the waiting time at the PPO, V-I 2, 033.

<sup>993</sup> Referring to the time spent at the police station, V-I 2, 041.

<sup>994</sup> Referring to the time spent at OVD, V-I 1, 009.

<sup>995</sup> V-I 1, 013.

<sup>996</sup> V-I 1, 014.

<sup>997</sup> V-I 2, 014.

<sup>998</sup> Referring to the time spent at the police station, V-I 1, 021.

<sup>999</sup> V-I 1, 022.

This reality complicates the daily activities of Victims and mostly the compliance with further appointments and requests they were not expecting at the time they submitted complaints.<sup>1000</sup> Submitting complaints is for some Victims an end of their actions and the beginning of the intervention by others.

Twenty-six victims were asked during second interviews whether they thought they could deal with problems in a reasonable time. Most of them answer in the positive,<sup>1001</sup> two are undecided (*more or less*),<sup>1002</sup> and five say “No.”<sup>1003</sup> Some Victims remark that the *times of the judicial system do not match with the times of Victims*,<sup>1004</sup> and that the legal procedure is not costly in terms of money, but is in terms of time.<sup>1005</sup> Speed is mentioned by some Victims as the key element lacking in the current judicial system.<sup>1006</sup> A group of Victims mentions that even though it might sound logical to give time to the accused to respond to requests, the time to comply with those requests does not match the needs of Victims to see their problems solved.<sup>1007</sup> Some Victims explain they could deal with problems in a reasonable time only at the beginning<sup>1008</sup> while others say during the entire legal procedure.<sup>1009</sup> Yet, most Victims do not have an ideal reference point on what it means to solve a problem in a reasonable time<sup>1010</sup> or understand that time spent also relates to the different options that need to be explored.<sup>1011</sup> A group of Victims considers that speed stops when evidence is required.<sup>1012</sup> The Victims who consider that the legal procedure was *more or less* done in a reasonable time explain that the time between one option and another could be shortened (e.g. time between the cancelation of mediation and the rescheduling of another).<sup>1013</sup> The waiting time is also considered as something that could be reduced.<sup>1014</sup>

The group which responds that they could not deal with problems in a reasonable time mentions the variety of options that were never implemented as the factor that prolonged the process (e.g. having a trial scheduled and then cancelled due to a

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<sup>1000</sup> V-I 1, 002; V-I 1, 037; V-I 1, 003; V-I 1, 044; V-I 1, 050; V-I 2, 012.

<sup>1001</sup> V-I 2, 003; V-I 2, 006; V-I 2, 007; V-I 2, 012; V-I 2, 014; V-I 2, 024; V-I 2, 026; V-I 2, 027; V Male-I 2, 028; V-I 2, 033; V-I 2, 034; V-I 2, 035; V-I 2, 037; V-I 2, 038; V-I 2, 039; V-I 2, 041; V-I 2, 043; V-I 2, 044; V-I 2, 050.

<sup>1002</sup> V-I 2, 051; V-I 2, 052.

<sup>1003</sup> V-I 2, 001; V-I 2, 019; V-I 2, 031; V-I 2, 045; V-I 2, 053.

<sup>1004</sup> V-I 1, 032; V-I 1, 004; V-I 1, 011; V-I 1, 019; V-I 2, 001; V-I 2, 006; V-I 2, 021; V-I 2, 031.

<sup>1005</sup> V-I 2, 039.

<sup>1006</sup> V-I 1, 001; V-I 1, 032.

<sup>1007</sup> V-I 2, 050; V-I 2, 052.

<sup>1008</sup> Referring to the speed with which to obtain a restraining order (OVD, civil court, police station), V-I 2, 034.

<sup>1009</sup> In the words of Victims: “Yes, we could solve everything very fast,” V-I 2, 035; “Yes, because I was always called to come during the afternoon,” V-I 2, 037.

<sup>1010</sup> V-I 2, 003; V-I 2, 014.

<sup>1011</sup> Referring to the suggestion of alternative dispute resolution mechanisms, V-I 2, 050; and, V Male-I 2, 028.

<sup>1012</sup> Referring to the require to transcribe the messages sent by the accused, V-I 2, 006; and, V-I 1, 044.

<sup>1013</sup> V-I 2, 052.

<sup>1014</sup> V-I 2, 051.

request for an expert opinion).<sup>1015</sup> Moreover, some Victims highlight as negative that the time allocated by the judicial system to complaints does not match the increased risk to children of being exposed to violence.<sup>1016</sup> A Victim responds in the negative when asked whether she ever used the referrals given during the process. She explains that she *cannot be two hours talking about these things. Only if it is urgent [will she] do it*.<sup>1017</sup> Another Victim remarks that time is not a problem, that in total she only missed two hours at work to go to testify at the PPO.<sup>1018</sup>

Some Victims comment that the time spent in waiting rooms of organizations was the element that pushed them to discontinue using certain resources. For example, one Victim does not continue with her psychological therapy at the hospital because every time she attended she was given a number and had to wait to be called.<sup>1019</sup> Other Victims mention not wanting to be responsive in their cases because they do not have the time.<sup>1020</sup> Other Victims mention that the time spent is determinant for their decision not to submit other complaints,<sup>1021</sup> leave civil courts before obtaining restraining orders,<sup>1022</sup> or continue with the cases.<sup>1023</sup>

Another group of Victims recognizes that even though they need to spend time, the assistance is reasonable and effective.<sup>1024</sup> Some Victims say that they would submit another complaint if they encountered a similar situation;<sup>1025</sup> while a smaller group of Victims believes they would not submit another complaint under a similar situation because in general they have not experienced positive results.<sup>1026</sup>

### 5.6.2.3. Family Obligations

Children are often considered an impediment to enforcement because they are the main responsibility of the daily activities of Victims. Victims consider that it is difficult to attend meetings because they need to organize a way to avoid leaving children unattended.<sup>1027</sup> If children are brought to meetings, Victims tend to get anxious that the children will be bored and misbehave, impeding or delaying the continuation of

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<sup>1015</sup> V-I 2, 001.

<sup>1016</sup> V-I 2, 031.

<sup>1017</sup> V-I 2, 006.

<sup>1018</sup> V-I 2, 045.

<sup>1019</sup> V-IwSP, 014.

<sup>1020</sup> V-IwSP, 021; V-I 1, 024; V-I 2, 001; V-I 1, 002.

<sup>1021</sup> V-I 2, 019; V-I 2, 001.

<sup>1022</sup> V-I 1, 011; V-IwSP, 011.

<sup>1023</sup> V-I 2, 012.

<sup>1024</sup> V-I 1, 038; V-I 1, 034; V-I 1, 041; V-I 2, 003; V-I 2, 006; V-I 2, 007; V-I 2, 012; V-I 2, 014; V-I 2, 024; V-I 2, 026; V-I 2, 027; V Male-I 2, 028; V-I 2, 033; V-I 2, 034; V-I 2, 035; V-I 2, 037; V-I 2, 038; V-I 2, 039; V-I 2, 041; V-I 2, 043; V-I 2, 044.

<sup>1025</sup> V-I 2, 014; V-I 2, 021; V-I 2, 027; V-I 2, 031; V-I 2, 034; V-I 2, 037; V-I 2, 047; V-I 2, 050; V-I 2, 051; V-I 2, 052; V-I 2, 053; V-I 2, 054.

<sup>1026</sup> V-I 2, 001; V-I 2, 019.

<sup>1027</sup> V-I 2, 052; V-I 2, 031; V-I 1, 016; V-I 1, 004; V-I 2, 007; V-I 2, 003.

meetings.<sup>1028</sup> A Victim explains that the fact that the child is now older makes the situation better because he accompanies her and protects her.<sup>1029</sup>

#### 5.6.2.4. Money

Victims do not address monetary costs that are directly linked to their access to organizations. For example, a Victim expresses, *I was not asked even a cent during the process because what you do is free of charge*,<sup>1030</sup> while another Victim states that she *paid nothing*.<sup>1031</sup> However, the cost becomes visible when Victims consider peripheral costs that are needed to comply with requests. For example, they mention losing working hours and incurring public transportation costs.<sup>1032</sup> Another Victim says that transportation is not a financial burden because she has a subsidy from the state, though it is time-consuming.<sup>1033</sup> Only one Victim remarks that commuting to places not reachable by public transportation is expensive since she needs to pay for a taxi.<sup>1034</sup> Proximity to units is mentioned as an enabler to continue with complaints because it reduces costs and time.<sup>1035</sup>

A Victim mentions that she delayed the submission of papers for divorce and child support/visitation until she had saved enough money to pay for a lawyer (5.5.3.2.).<sup>1036</sup> This Victim did not contemplate using the pro bono services because she doubted their capacity to represent her efficiently. Other Victims explain that paying for lawyers is a struggle rather than an impediment, since they have to sacrifice other uses of their money or request financial support from family members.<sup>1037</sup> Another Victim explains that she initially struggled to pay for a lawyer but then learned through friends of the existence of the lawyers of the Public Defender of Minors and the Disabled.<sup>1038</sup> She expresses that *it worked well*.<sup>1039</sup>

#### 5.6.2.5. Type of Assistance

Some Victims feel that organizations do not fully understand the type of fear and risks they experience when the enforcement of effective measures is delayed.<sup>1040</sup> However, most Victims view the assistance as positive because even when they do not see the concrete enforcement of a measure against the accused, they feel heard, supported,

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<sup>1028</sup> V-I 2, 012; V-I 1, 015; V-I 2, 007.

<sup>1029</sup> V-IwSP, 019.

<sup>1030</sup> V-I 2, 034.

<sup>1031</sup> V-I 2, 014; V-I 2, 024; V-I 2, 039.

<sup>1032</sup> V-I 2, 043; V-I 2, 044; V-I 2, 052. Public transportation in Argentina has been highly subsidized during the past decades. At the time of the first and second interviews, a policy was implemented to start slowly to reduce the subsidy and therefore some Victims felt the burden of the increase in price, see Ministerio del Transporte, “Subsidios y Compensaciones Otorgadas.”

<sup>1033</sup> V-I 2, 007.

<sup>1034</sup> V-I 2, 012.

<sup>1035</sup> V-I 2, 026; V-I 2, 041.

<sup>1036</sup> V-I 1, 026; V-I 2, 031.

<sup>1037</sup> V-IwSP, 042; V-I 1, 042; V-I 1, 044; V-I 2, 003.

<sup>1038</sup> V-I 2, 038.

<sup>1039</sup> Ibid.

<sup>1040</sup> V-I 1, 001; V-I 2, 001; V-I 1, 032; V-I 2, 049.

and assisted.<sup>1041</sup> Victims mention that the non-holistic approach by organizations becomes an impediment because every aspect of the problem needs to be solved separately.<sup>1042</sup> Complying with all referrals is considered difficult, though some Victims *do whatever needs to be done*.<sup>1043</sup> Deciding to submit complaints is a long process for some Victims, and once the decision is made, some feel the need to continue regardless of the requests from the judicial system.<sup>1044</sup> Other Victims view every additional step as a reason to drop from the legal procedure.<sup>1045</sup>

#### 5.6.2.6. *Notifying the Accused*

Notifying the accused becomes an impediment for some Victims to accelerating the legal procedure. In two cases Victims explain that the fact that they ignored the location of the accused impeded the notification and hence delayed the enforcement of measures.<sup>1046</sup>

#### 5.6.3. Accountability

Victims do not mention means used to hold providers accountable. Only the Victim who is a lawyer specialized in domestic violence demanded the officer at the civil court act quickly.<sup>1047</sup> As mentioned above, few Victims have expectations as to what the legal procedure should provide them (in terms of time, measures, and outcome), and therefore they lack elements to hold someone accountable. At the most, Victims approach organizations to ask for updates. Accountability appears not to be an element in the process of LE of Victims who access the PPO.

### 5.7. Concluding Observations

The LE framework is applied in this chapter to Victims. The following concluding remarks address the LE framework and, differently to chapters 3 and 4, provide main findings for each component of the LE framework. This chapter generates awareness of the existing complexity of domestic violence as a legal, social, and personal problem. Further studies need to be done in order to assess the factors that help explain that complexity.

#### 5.7.1. Rights Enhancement

The developments in the LE of Victims are not linear. There is a consistent pattern of what Victims want, expressed in terms of basic feelings such as happiness or tranquillity, yet for each Victim the enhancement of rights has different paths. There is often a difference developed from the time of the “say to the change,” and some Victims who had strategies planned in first interviews were not able to materialize

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<sup>1041</sup> V-I 2, 012; V-I 2, 026; V-I 2, 041; V-I 2, 043; V-I 2, 044.

<sup>1042</sup> V-I 2, 031.

<sup>1043</sup> V-I 1, 003.

<sup>1044</sup> V-I 2, 006.

<sup>1045</sup> V-I 2, 050; V-I 1, 024.

<sup>1046</sup> V-I 1, 038; V-I 1, 053.

<sup>1047</sup> V-I 1, 032.

those strategies by second interviews. The motivation to submit complaints is rarely related to an understanding or will to enforce legal provisions, but rather to an internal process of Victims. The occurrence of an event that makes Victims arrive at a saturation point and the well-being of children are most commonly mentioned as events that motivate actions.

Submitting complaints is perceived by Victims as an event that separates more than reconciles, showing that the judicial system and the legal provisions transmit the historical inquisitorial system in which the judicial system is meant to find truth, with a clear partition between the good and the bad. The data also reinforce the idea that many Victims before submitting complaints go through an empowerment process where they arrive at a level of recognition, perception, and/or understanding of what they are capable of doing without the accused. Having the experience of actually earning income or taking care of the household without the accused before submitting a complaint is a strong factor that contributes to the understanding of Victims of what they are capable of.<sup>1048</sup> This life experience appears to be stronger than the reception of legal information and advice from organizations.

The objectives that Victims pursue with complaints relate to changes in the behaviour of the accused. These changes are perceived as something that the accused have to do or something that the judicial system has to enforce. A smaller group of Victims perceives as an objective an action that they have to perform. Complaints are therefore viewed as a request for help to stop undesired behaviours. Victims often expect to receive help to deal with problems and most of them realize that there is a combination of those that can assist in the search for help (e.g. themselves, accused, judicial system, lawyers).

Strategies of Victims to deal with problems and strategies of the judicial system to resolve those conflicts often follow different paths. For some Victims submitting a complaint is as far as they can go in terms of strategy building, and hence the importance of the role of public policies in the immediate time after submitting complaints to enable the development of sustainable strategies. The judicial system provides Victims with a strategy that they are called upon to follow without understanding its connotations. On many occasions Victims find difficulties in making decisions, yet simple options to choose from may facilitate the decisions.

The judicial system is perceived as a place that provides protection and has the capacity to force others to perform in a certain way, yet not as a place that handles agreements or enhances communication between the parties involved in the conflict. In addition, some Victims access the judicial system with concerns that go beyond the problems that triggered complaints (e.g. alcohol addiction instead of domestic violence), and for these Victims there is a mismatch between what they want and the type of service received.

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<sup>1048</sup> Legal documents show that all Victims who submitted complaints were informed of their main rights. At OVD, Victims were also informed about legal options, resources available, and emergency numbers. At police stations and the PPO, they were also informed about emergency numbers.

Victims do not show an intention to participate in the policy process. Only one Victim, a lawyer specialized in domestic violence, uses her expertise to ensure proper delivery of assistance by the judicial system and develops mechanisms to participate in the policy process by joining a political party. These two activities were triggered by her profession and not by the problem that brought her to OFAVyT. In the remaining cases Victims experience the transfer of information about resources to other Victims, and they feel sympathetic about the experiences of other Victims. A sense of community is perceived.

### **5.7.2. Rights Awareness**

Victims, in theory, experience a legal procedure and the recognition of rights when they obtain access to justice. Learning about the legal procedure and rights does not appear to be an easy task. After submitting complaints Victims learn that there is someone to help them, that they can count on organizations, and that the legal procedure does not end with a complaint but rather calls for further participation. On some occasions Victims express feeling negatively surprised as to what the legal procedure entails, mostly as to the way it alters their daily agenda. Moreover, when Victims do not understand why they are being referred to another place the sustainability of the legal procedure is put at risk.

Not understanding the reasons for referrals creates more chances for Victims to forget the place they visited, due to the lack of association, and, therefore, it might not easily be clear to them where to request a follow-up. In addition, not understanding the reasons for referrals gives Victims limited chances to re-use them if they encounter similar problems. Victims who show an understanding about what is happening with their different civil and criminal cases do not address these happenings based on what rights are being protected by each organization, but based on what the organizations do (e.g. understanding the PPO as the one that will perform mediation).

Informing Victims about the implications of complaints may be an empowering alternative because they can get hold of information on what is required from them, make an informed decision, and start building a strategy to comply with requests. It can be argued that informing Victims as to what is ahead of them might discourage them from submitting complaints. Yet it seems unfair for people seeking help not to be informed as to the type of help they will receive from the organizations they approach and to be informed as to what the consequences are that people will have to face. The action of clearly informing Victims may reinforce the positive sensation expressed by Victims of becoming aware of their capacity to take actions and to increase the embracement of their problems. Victims cannot leave an organization with a false impression that someone will take over their problems, because this provokes inaction.

In almost every interview answers were negative when Victims were asked about the extent to which they knew their rights. Some Victims even stressed that they never thought in those terms. This high level of not understanding gives Victims a single

option: follow directions and suggestions by providers, lawyers, and/or family members. Victims rely on their information and suggestions, and most of the time they are recipients rather than seekers of information and suggestions. However, some Victims participate in the legal procedure if they are asked to make simple decisions on a reduced number of options (e.g. mediation or no mediation).

Victims show limitations to the extent they can retain the information provided during meetings with organizations, and follow-up calls create a reassuring feeling in some Victims. Sometimes Victims explain that the legal terminology and judicial culture make it difficult for them to understand. Other times Victims explain that the fear and stress limit their possibility to understand. However, a group of Victims expresses a relation between becoming aware of their own capacity to do things by themselves (e.g. receiving a first salary or accomplishing a personal project) and the self-confidence in changing an unwanted reality. Optional programmes offered and designed for Victims to work on their own strengths and skills to continue developing self-awareness of what they are capable of doing away from the accused can be effective to strengthen the LE process.

Legal terminology can be an obstacle to rights awareness. Other obstacles mentioned are time and commitments. Some Victims explain being unable to take care of their legal procedures because they did not have the required time. Others explain that many times the number of actions given by the number of organizations involved becomes an obstacle to understanding which aspects of the problem are being taken care of by each organization. Lawyers and family members who are present and care, together with committed providers, are mentioned as instruments to overcome the lack of understanding. The commitment of providers is defined by their follow-up calls which also trigger trust in organizations, and by their active listening through note-taking and asking questions that trigger trust in organizations and order and confidence with their problems. Yet, questions are considered detrimental for some Victims due to their degree of repetition and frequency. Some Victims even understand the repetition of questions as a sign of lack of trust from providers. Mediation, even when appearing as a good tool to enable communication, is not mentioned as a place where Victims gain further understanding of their legal problems. OFAVyT assists some Victims in understanding the differences between their civil and criminal cases and what to expect from each of them.

The process of rights awareness has no starting point. Interviews show that Victims begin their process even before submitting their complaints, occasionally as a result of anecdotal events (e.g. listening to information on an elevator). Information given during meetings with providers might be remembered by Victims, but this is not always the case. Mostly, Victims remember basic statements and principles that help them reinforce their decision to act. Differences were found as to how Victims experience rights awareness between those born in Argentina or other countries of the region and those born in Bolivia. Most Victims from Bolivia see the fact of learning about their substantive right to a life free of violence through organizations as a revelation. The process of rights awareness proved to be contagious because most



Victims express learning about their options through friends and family members and transmitting this knowledge to other Victims.

Tools normally used by organizations to promote information, such as brochures, are not considered useful by Victims. TV shows and awareness of the experiences of other Victims are named as providers of information about possibilities available to resolve domestic violence situations.

Legal understanding of Victims and the way the legal procedure develops proceed along different lines and often never meet. Initially, Victims understand complaints as relief and as manifestations of their desire to change. However, Victims are not aware of the legal procedure they will need to face. Informing Victims about the legal procedure ahead of them might become empowering; however, the problem of lack of rights awareness goes deeper. Unless legal provisions and the judicial system change, Victims have few chances to make informed decisions along the legal procedure because they lack the needed elements. Providing those needed elements is also something that organizations cannot do, because their organizational structure and judicial culture are not built for such a purpose.

### **5.7.3. Rights Enablement**

Police stations, the OVD, and the PPO are, in that order, the resources most used by Victims to submit complaints. Physical proximity and familiarity with resources are important elements for Victims when choosing resources. Social networks are also named as one of the main resources to reveal the existence of organizations and to provide support at the time of submitting complaints. Most of the time females of a social network support other females. Victims activate a demanding process with their complaints and many of them do not count on personal resources to comply with everything. Each additional step that Victims need to comply with adds another step towards reaffirming their decision to submit the complaint.

Victims who continue in the legal procedure follow directions and suggestions given by providers. Those directions and suggestions, therefore, entail responsibility for providers. Time is the main scarce resource mentioned by Victims. They do not have time when needing to combine requests of the judicial system with their work schedule and parental obligations.

Lawyers enable Victims to reduce their participation in their legal procedure and allow for someone with knowledge and understanding to step in. Some Victims consider the presence of a lawyer essential, while others do not view it as necessary. However, civil complaints demand the presence of a lawyer, and in some cases Victims postpone civil requires because they do not have the financial means to afford a lawyer. The quality of pro bono lawyers is negatively considered by some Victims who associate not paying with bad service. Payment of services can therefore be an element to enhance LE because it seems to give additional capacity for Victims to feel their right to demand good service. Psychologists and group therapy are deemed important for some Victims to build a strategy to overcome problems. The way Victims feel listened to and supported by multidisciplinary units is viewed as positive. The chance to talk in

a calm space enhances in Victims a feeling of tranquillity and offers a space for self-reflection. However, the repetition of questions and duplication of tasks are not positively perceived since some Victims cannot understand their purpose.

Mediation is sometimes feared by Victims because they do not know how the accused may react. However, Victims who experience mediation highlight the chance to communicate with the accused. Respectful communication enabled by the mediation and registered in mediation agreements on some occasions act as means to solve problems. Mediation can act as a symbol of power manifested by Victims towards the accused, and in some cases where mediation is feasible, techniques by providers can be implemented to reduce the feeling of fear. For example, Victims and accused could sign, before mediation takes place, an agreement of conduct stating the expected behaviour. In addition, providers could use more tools to explain to Victims how mediation is going to take place, who is going to be present, and what Victims can do during mediation in case they feel uncomfortable and afraid (e.g. “maquettes”). All those techniques are meant to give confidence to Victims.

The presence of authoritative figures, such as judges, is considered helpful to give reassurance in the authority of complaints. Trial does not seem to occur very often, at least in this study. However, Victims do not always desire to reach trial and most of them do not even want to cause harm to the accused. Victims do want an actor capable of enforcing good conduct or an effective penalty that will make the accused stop the abusive behaviours. In this sense, monetary penalties are mentioned by some Victims as being an effective penalty. Judges, even when not very present in the discourse of Victims, are mentioned as actors capable of enforcing such behaviours.

Criminal complaints sometimes derive from the lack of effect of civil complaints, and are viewed by some Victims as a second step. Criminal complaints become the remaining active legal action in cases where parties do not have a family relation. In other cases, criminal complaints appear as means to leave records of what happened.

The vast majority of Victims mention having at least one person within their social network to count on in case of need. This finding addresses the characteristics of Victims who dare to submit complaints, and the social network can be viewed as a needed element to enable LE. Further research needs to be conducted with Victims who do not obtain access to justice in order to assess the extent to which the social network plays a role in the decision to submit complaints. The type of role the state might need to play in cases of Victims without a social network will depend on those future findings. Physiologists and spiritual activities show themselves also to be powerful resources in the enablement of decisions to act and to sustain decisions. Victims who become aware of positive experiences of other Victims (i.e. sharing “successful cases”) increase their trust in the assistance and the trust in their own capacity to solve problems. The option to meet with “successful” Victims could be considered a new technique. A safe blog could be designed to allow Victims to communicate and share experiences.

Victims consider the quality of the assistance provided and the quality of the communication towards the enablement of conflict resolution important. The quality

of the assistance provided is measured by the actions performed by providers that are then read by Victims as symbols of care, support, protection, and confidence. A reasonable number of follow-up calls, actions, active listening during meetings, and a proper physical space are mentioned as a sign of quality of assistance. Judgemental assistance, lack of compromise, and long waits before being assisted represent aspects of low quality in the assistance. For some Victims those negative aspects trigger their decisions to discontinue with the use of those specific organizations.

Victims communicate with organizations by approaching the physical location or by telephone. At the beginning, Victims go to organizations to submit complaints, and once complaints are submitted Victims mostly communicate with the organizations either by telephone or through their lawyers. The Internet or text messages are not mentioned as means of communication. Victims can “trick” the current communication system if they want to discontinue with the legal procedure (e.g. changing chips in cell phones, avoiding taking telephone calls, simply hanging-up). These “tricks” give freedom to Victims to gain control over those communications and to control the extent to which they feel prepared to be involved in their complaints. However, other means of communication could be provided to Victims. These means can be uninterrupted and with no presence of providers in order to allow Victims to continue developing their LE even when withdrawing their complaints. It is surprising that classic means of communication still prevail in view of the technological advances experienced in that field. Further studies and policy pilots could be performed in order to allow for other means of communication that can make use of new technologies.

Victims experience other problems after the submission of complaints and their agendas keep adding compromises and activities. Proper communication that could allow Victims to plan their agendas could be beneficial to comply with appointments and with their participation in the legal procedure.

Personal feelings play a significant role in the experiences of Victims with organizations. Most Victims express the consequences brought about by their complaints in terms of feelings. Complaints enable feelings of tranquillity, confidence, support, and trust in one’s own capacity. All these aspects become important elements of LE because access to organizations contributes to the development of positive feelings that relate to a belief in personal capacities to perform. However, not every Victim experiences positive feelings, and some of the negative sensations are feeling nervous, afraid, and bad. Those feelings are frequently triggered by the fact that the accused are individuals with whom Victims hold feelings or memories of love.

Relations with the accused change after the submission of complaints almost without exception. This can be explained by the fact that many times Victims submit complaints after repeated abusive events, and most probably changes in the relationship started before the submission of complaints. It becomes important for LE to observe that Victims who submit complaints already have built an “empowerment floor,” and that organizations play an important role to the extent they can help to continue building that empowerment. The type of effects that the

accused experience after complaints are various and depend at least on one of the following factors: (i) the type of relationship the parties have at the time complaints are submitted (i.e. if they are a settled couple, if they have children, or if they are family members), (ii) the culture where the couple grew up, and (iii) the alcohol or drug addiction of the accused.

#### **5.7.4. Rights Enforcement**

Enforcement of rights is not commonly present in the discourse of Victims. A reason for this can be the reduced awareness of rights they were able to enhance and consequently their reduced capacity to envision the enforcement of concrete acts. The way in which Victims view their problems as solved and the way the PPO views the complaints closed proceed along different lines. This is observed by comparing the phase of the complaints in legal documents and the answers of Victims about the extent to which they consider problems solved. Victims normally do not envision concrete enforceable results, such as jail sentences or mediation agreements. This approach to conflict resolution seems normative and Victims do not seem to correlate solutions to their problems to the enforcement of measures.

Problems of Victims are disentangled into many strands as Victims obtain access to justice. It is therefore not surprising that some Victims consider their problems to be partially solved, and that other aspects of their problems are to be taken care of by different organizations. Solving all aspects of a problem is a struggle and Victims perceive their employment, time, and family obligations as obstacles to responding to all judicial requires, and ultimately see them as barriers to enforcement. The Victims who are part of the formal economy and have the possibility to ask for paid leave do not perceive the financial burden of asking for hours off at work. Some of those Victims feel it somehow shameful, however, because they still need to ask for permission. A flexible working schedule is also considered an advantage for the possibilities of complying with judicial requires.

The monetary cost of submitting complaints is not a burden for Victims. The monetary cost becomes significant only when Victims need to comply with different requests that imply losing paid working hours, mobilization to attend to different places, and legal representation to enable rights (e.g. child support). Time is another asset that needs to be available for Victims to enforce rights. Moreover, delays and bureaucratic requests restrict the LE of Victims because they start to lose trust in the judicial system as a provider of tools. Yet, Victims ignore what to expect in terms of time and results. Even when Victims sometimes view as excessively long the time they have to wait to see any action taken, they do not have the means to judge those delays and to enforce speed in their legal procedure. And, even when Victims sometimes do not view the judicial decisions as effective, they do not have the means to judge the decision and to request something different. The value of conflict resolution for Victims currently seems not to be in the enforcement of a penalty but on the support Victims receive from the judicial system as a sign of care and company.



## Chapter 6

### Closing Statements

#### 6.1. Presentation

Empirical legal research is an approach to study the law in its social dimension. It conceives the law as an element that affects the lives of people, and applies methods to study that interaction: it is an approach to study law in action. The previous chapters analyse how access to justice for victims of domestic violence (Victims) affects the phenomenon of legal empowerment (LE), addressing the following main research question: *How does access to justice legally empower victims of domestic violence?* To that question the study builds upon a theoretical framework and works with the assumption that Victims, by obtaining access to justice, gain the capacity to solve their problems (i.e. attaining LE).

This study offers and applies a novel LE framework. The study does recognize the USAID framework as helpful in understanding LE in four components representing the development of rights, their understanding, the possible channels to exercise them, and the actual exercise. The USAID framework is, moreover, adjusted in this study by the author with theoretical and descriptive findings. The result is a novel LE framework that combines two aspects. On the one hand, the LE framework is divided into three levels of analysis: legal provisions, organizations, and individuals. On the other hand, the LE framework applies to each of those three levels the four components proposed by the USAID framework.<sup>1</sup> That combination is novel. The cyclical aspect of the USAID framework proposes a connection between rights enforcements and rights enhancement every time that a legally empowered person gains the capacity to participate in the policy process and exercise his or her rights to democratic participation. That connection is not observed from the results of this study, however. Ultimately, the LE framework assists in organizing a complexity that increases from the understanding of legal provisions, to the understanding of organizations, and to the understanding of individuals; in this last level complexity increases significantly.

This final chapter presents concluding statements for a study that is meant to discover and not to assess reality. As addressed by Harry F. Wolcott, when explaining how to conclude qualitative studies, in qualitative research it is not always “necessary to push a canoe into the sunset at the end of every presentation,”<sup>2</sup> because the value of this qualitative research lies in the discovering of factors and potential relations of an unexplored reality. Consequently, this chapter summarizes main learnings and offers reflections (6.2.). Moreover, it compares its results to previous studies to account for its theoretical and empirical external validity, i.e. the extent to which some of the findings can be generalizable to other settings, populations, or theories. Learnings and reflections were possible due to the exploratory approach and the use of the LE

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<sup>1</sup> i.e. rights enhancement, rights awareness, rights enablement, and rights enforcement.

<sup>2</sup> Wolcott, *Writing up Qualitative Research*, 114.

framework. This chapter also provides recommendations (6.3.) and brings new questions that are triggered by the findings and that invite further research (6.4.).

## 6.2. Summary and Reflections

This sub-section presents the main learnings of the study to understand how access to justice can legally empower Victims and derives from the application of the LE framework as defined in chapter 2. The presentation of the learnings below addresses main findings extracted from legal provisions, organizations, and individuals. The main learnings are compared, when possible, with findings by previous studies. Main learnings are accompanied by reflections.

### 6.2.1. Recognition of a Gender Policy Problem

Violence against women is a policy problem recognized in international and national agendas. Human rights treaties, federal laws, and internal regulations represent examples of policy attempts to deal with violence against women understood as a manifestation of a discriminatory act within different spheres of life performance of women. Legal Organizations also recognize violence against women as a policy problem subject to state intervention, and, therefore, public funding is allocated to tackle this policy problem. Consequently, Legal Organizations are being designed to assist Victims and multidisciplinary assistance is delivered primarily by a team of lawyers, psychologists, and social workers. Within the multidisciplinary assistance, the Domestic Violence Office (OVD) is recognized by Victims as a place where their voices are heard. Active listening by service providers at the OVD is interpreted by Victims as a sign of help, trust, and confidence which results in a feeling of tranquillity, support, and company. Repetitive questions, however, can be perceived by Victims as the questioning of the validity of their accounts. Moreover, long waits may discourage them from returning. The Victims and Witness Assistance Office (OFAVyT) is referred to more as a place to start grasping some of the consequences of complaints.<sup>3</sup> This can be explained because most of the time the OVD acts as an access point, while OFAVyT is a referral point. Follow-up calls performed by OFAVyT and the Public Prosecutor's Office (PPO) are viewed by some Victims as a sign of support to continue with their cases, yet others perceive those calls as invasive.

Legal provisions, justice providers, and service providers agree with the fact that domestic violence is assimilated to a gender issue triggered by social roles assigned to men and women in contemporary societies. Statistics<sup>4</sup> and recent publications<sup>5</sup> also support this argument. The composition of the sample in this study reaffirms those statements. The only male Victim interviewed in this study is an outlier when speaking

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<sup>3</sup> e.g. being instructed to transcribe messages or attend mediation.

<sup>4</sup> Ministerio Público Fiscal de la Ciudad Autónoma de Buenos Aires, "Oficina de Asistencia a la Víctima y Testigo"; OVD, "Oficina de Violencia Doméstica - Estadísticas," both sources reveal that more than 90% of victims of domestic violence are women.

<sup>5</sup> Falú, "Violence and Discrimination in Cities"; also including statistics on the dimension of the problem in Argentina, see Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 282–86; Burton, "Domestic Abuse. Literature Review," 10.

about the relation with police officers,<sup>6</sup> and in the way he approached the PPO and requested action.<sup>7</sup> He believes the current gender-oriented policies do not recognize that psychological domestic violence is also exerted by women over men. This perception is also recognized more broadly by legal scholars who address domestic violence as a conflict also affecting men.<sup>8</sup> These legal scholars reflect on the need to soften the relation between domestic violence and gender.

Symbolic violence in legal provisions and the subsequent responsibility of policymakers to introduce means of enforcement are important advances in law and are still expected in policy implementation. Consequently, it becomes important to remove stereotypes primarily by including gender-neutral activities in the curriculums at schools and in channels of communication. In this policy search to reduce violence based on gender it is important, however, that policymakers become aware of possible creation of other harmful stereotypes, such as “all men are violent” and “all women are victims.” Injustices can take place in the name of stereotypes as those that were, and still are, performed within the “old” stereotypes assuming that “women provoke the reaction of men.”

### 6.2.2. Legal Empowerment as a Process

LE is a process affecting legal provisions, providers, and Victims. A clear lesson from the fieldwork period in the US was given by a lawyer specialist in domestic violence and was later confirmed in this study. The interviewee explained the process in the following way:

*[As a lawyer] you need to recognize and change your idea of what a victory or win is for your client. You have got to change that. Because otherwise the attorney becomes discouraged, burns out of this kind of practice, becomes cynical. ... And the attorney feels, 'Why should I put myself through this because they are going to reconcile ... [A]ll this legal effort is going to be for nothing.' But it is not. It is not for anything, it is, it is a goal, they have been safe for a period of time, and, that is a huge accomplishment. They have become aware that there is somewhere they can go for the help, so when it happens again they know where to go, what are the things they ought to do. They realized, 'Hi, I survive without this person for two weeks, or a month or two months, so maybe I can, maybe he is wrong, and maybe I can actually manage on my own,' each little step along that way is a huge accomplishment. Now, I will say this, if Argentina is going to involve social workers or counsellors, something like this will help immensely.<sup>9</sup>*

This quote presents elements of the process of LE. First, in relation to legal provisions (as captured later in the above-mentioned interview) it points to the fact that legal provisions are meant to provide tools to grant justice to Victims. Second, in

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<sup>6</sup> The Victim mentions a feeling of trust.

<sup>7</sup> The male Victim approached the PPO as a walk-in after submitting the complaint at the police station without an appointment and to seek for an update and delivery of assistance.

<sup>8</sup> See, e.g. George, “Invisible Touch.”

<sup>9</sup> Attorney at Legal Aid in the US, In-depth Interview.



relation to providers it points to the need to understand domestic violence, the need to change expectations and the need for a multidisciplinary approach. Third, in relation to Victims it points to the fact that the process of awareness starts before Victims submit complaints,<sup>10</sup> and to the fact that knowing the resources available for help may lead to the solution of problems. Furthermore, it points out that the submission of complaints is an act that creates awareness of one's own capacities and of ways available to exercise freedoms. LE is not a linear process, and as other scholars also perceive, the process of LE is also affected by time and life experiences.<sup>11</sup>

The process of rights awareness experienced by Victims can be viewed as the core element in their LE process because it is the enabler to the exercise of capacities to freely choose. Victims start absorbing information through different stimuli, some are anecdotal events<sup>12</sup> while others are meant by organizations to create awareness.<sup>13</sup> The way other people, providers, and the social network of Victims respond to domestic violence is also mentioned by Victims as part of their process of rights awareness. Therefore, it is important to approach rights awareness through examples of respect and acceptance and through education. Furthermore, the way those actors react to the problems of Victims is viewed as a barometer measuring the actual importance of their problems. These findings can enrol in the studies of legal scholars that view rights as representing accepted social norms of a given society.<sup>14</sup> Finally, legal provisions and Legal Organizations are meant to assist Victims in this process and to provide channels for Victims to participate in its design and assessment. By doing so, the LE process becomes a societal responsibility aiming at contributing to the exercise of one's own capacities.

### 6.2.3. Access to Justice as a Tool for Change

Access to justice increases the perception Victims have of their chances to achieve a change. Golub also finds that providers perceive that Victims reduce the disparity power relationship and increase bargaining power when they obtain access to justice.<sup>15</sup> Access to justice is part of the LE process, because Victims start visualizing an opportunity to change and start reactivating a latent trust in a possible solution. The decision to submit a complaint is triggered by a saturation point for many Victims. When this saturation point is reached Victims approach the place that is commonly accepted by their social network as a place to turn to for help. Police stations are, in most cases, associated with the place to seek help and therefore the main channel

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<sup>10</sup> This statement is confirmed by the data collected for this study and by the results presented by Genn stating that "typically it happened that [Victims of domestic violence] obtain advice before trying to solve the problem themselves," see Genn, *Paths to Justice: What People Do and Think about Going to Law*, 82.

<sup>11</sup> Gramatikov and Porter, "Yes, I Can: Subjective Legal Empowerment," 6.

<sup>12</sup> e.g. hearing about resources in the elevator.

<sup>13</sup> e.g. advertisements.

<sup>14</sup> e.g. Parise, *Historia de la Codificación Civil del Estado de Luisiana y su influencia en el Código Civil Argentino*, 376.

<sup>15</sup> Golub, "What is Legal Empowerment? An Introduction," 6.

through which to obtain access to justice.<sup>16</sup> Victims who approach organizations other than police stations view those organizations as settled in their neighbourhoods and as being responsive providers of assistance.

The contemplation of other access points to the judicial system represents one of the elements of the shift in paradigm that the concept of “access to justice” is experiencing. The concept, as shown by recent legal provisions, recognizes other ways to obtain access to the judicial system, beyond police stations and court desks.<sup>17</sup> It also recognizes other mechanisms that are able to deliver justice, beyond trial.<sup>18</sup> This approach to access to justice is also sensed in the design of more flexible organizations and in the further incorporation of the Victim in the process. The adversarial approach of legal provisions in the City together with the design of the PPO represent an example of how the right of Victims to a remedy focuses more on assisting Victims to recover than in punishing the accused. The adversarial approach appears to be more in line with the desires of Victims as expressed during interviews. Few Victims visualize “trial” or “punishment of the accused” as their objectives with the complaint. Most Victims relate what they want with their happiness or tranquillity and relate less their wants in the person of the accused.

The preliminary investigation stage incorporated by the Code of Criminal Procedure for the City (CCPC) and applied at the PPO gives tools for flexibility. However, this flexibility could be more useful if Victims had additional channels to influence their legal procedure. The main element blocking the manifestation of those chances is given by the lack of understanding Victims develop. Advancements in the simplification of legal terminology understandable to parties do not appear in recent legal provisions, and this aspect is recognized by Victims as an impediment to understanding and participating in their complaints. The complex legal terminology remains an obstacle for Victims to obtain access to justice.

#### *6.2.3.1. Alerting about Legal Empowerment*

Access to justice by the submission of complaints is a first step into the judicial system, and offers a sign of the existence of LE because through this act Victims exercise basic freedoms. These freedoms often encompass some level of education, the perception of an income, and a social network to reach out to for help. Most Victims had those three elements in common at the time they submitted their complaints. Other Victims explain that in preparation for the submission of complaints they started thinking of ways to be independent and to be able to secure a life without the presence of the accused. These statements hint at the fact that some Victims undergo a preparation process before submitting complaints. Emotional ties to the accused appear to be one of the most difficult elements to overcome together with a common household, the addictions to stupeficients by the accused, and having

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<sup>16</sup> The Citizens’ Advice Bureau has been found to be the first place in the UK where most people seek advice, see Genn, *Paths to Justice: What People Do and Think about Going to Law*, 85–90; see the web page at, CAB, “Law and Rights. Citizens Advice.”

<sup>17</sup> e.g. OVD.

<sup>18</sup> e.g. mediation.

children. Those elements hold Victims to the relationship and may act as an obstacle to LE. Previous studies have already addressed the dynamics just mentioned. For example, at an empirical level, Genn found a negative correlation between education and seeking advice.<sup>19</sup> She indicates that the less educated the people are, the fewer chances they have to seek advice. In addition, Gramatikov and Porter address the importance of the self-perception of individuals in their capacity to access to justice and to resolve their conflicts to achieve a degree of LE.<sup>20</sup> Other scholars mention that isolation increases chances of abuse, because Victims lack a network within which to seek help.<sup>21</sup>

Legal Organizations exercise an important role in supporting and assisting Victims in continuing to develop that initial spark of LE. Bruce et al. introduce the concept of capacity building as the way “individuals, communities, and institutions” can act as supporters of those more disadvantaged to exercise their “legal rights and use of legal tools” so as to allow for the development of individual capacities.<sup>22</sup> The opportunity for Victims to have an environment that can assist them in continuing to develop and exercise their freedoms is also shown in this study as an important means by which to enable the solution of problems.

The assistance in the development of freedoms is also perceived in the letter of the law every time recent legal provisions tend to be tailor-made and personalized to specific conflicts encountered by different groups.<sup>23</sup> The procedural legal provisions are meant to deepen those differences, while the substantive legal provisions are concerned with establishing an equality principle for those directly offended (i.e. Victims) in the private and public spheres.<sup>24</sup>

#### 6.2.3.2. *Participation in an Operational Path*

Victims obtain access to the judicial system and many start to perceive that they enter into a path with tasks to follow and with options. Domestic violence cases often trigger two complaints: one civil and another criminal. This implies following two paths with tasks/procedures. Those procedures often trigger other paths with tasks (e.g. counselling) and the number of organizations involved starts to accumulate. Few Victims understand the reasons why this accumulation occurs. Legal provisions, key civil servants, justice providers, and service providers cannot justify the needs of all those involvements either. Almost everyone agrees on the need to support legal remedies with counselling. A Victim and a justice provider called for integrated organizations (i.e. the Victim proposes a structure similar to a hospital, and the justice provider proposes a judge handling the civil and criminal aspect of the complaint). Moreover, studies have been done on the complexity encountered by Victims in

<sup>19</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 101.

<sup>20</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 6.

<sup>21</sup> Christie, “Conflicts as Property,” 7.

<sup>22</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 22–23.

<sup>23</sup> See Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 355 stating that the particularities of each family demand the adjustment of measures enforced by judges.

<sup>24</sup> *Proyecto de Código Procesal Penal de la Nación*, 134.

traditional systems without integrated courts,<sup>25</sup> and studies and policy strategies are being implemented with alternatives. For example, jurisdictions such as Ontario (Canada) and New York (US) are implementing Integrated Domestic Violence Courts to centralize legal claims and the delivery of assistance.<sup>26</sup>

Even though there is no answer to the ideal intervention, policymakers in the City have elements to map the number of organizations involved in the process and evaluate their activities. This information will allow the implementation of strategies to improve communication and cooperation amongst existing organizations so as to avoid duplication of tasks and confusion in Victims. Qualitative studies in the UK also find that Victims encounter difficulties following different legal procedures and get confused, even when they consciously decided to seek remedies.<sup>27</sup>

Victims arrive at the judicial system with the hope that someone will take over and solve their problems. This initial desire contradicts the actual participation required from them, and the actual possibility Victims have to gain tools to solve their problems and gain LE. This finding is also revealed in Genn's work every time she found that people at an initial stage want to "know how to solve their problems,"<sup>28</sup> and in the end what people want is not to be empowered but "to be saved."<sup>29</sup> Christie also argues that people are willing to give their conflict away and that lawyers are willing to take the conflict away from people.<sup>30</sup>

Victims show themselves to be passive in their participation during the legal procedure.<sup>31</sup> The reduced participation can be explained by the limited understanding Victims have about the legal procedure and what to expect; and, therefore, Victims participate when they are asked to do so. Time and the non-predictability of requests are elements that act as obstacles to participation. Therefore, a more structured schedule proposed by the PPO to Victims at the beginning might contribute to increasing the possibilities of Victims to free their agendas in advance so as to be able to comply with requests. Another factor that appears to be relevant is payment for services. Some Victims express that they pay and thus they can demand performance of services. Moreover, some Victims express that lawyers are more responsive when they receive payment from their clients.

This finding is in line with previous studies that found a direct connection between having one's own financial resources with a positive perception of one's own capacities to solve problems, self-esteem and sense of control over life.<sup>32</sup> Hence, payment for services also seems to be related to the authority Victims perceive they

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<sup>25</sup> e.g. Epstein, "Effective Intervention in Domestic Violence Cases," 21–50.

<sup>26</sup> National Institute of Justice, "New York Integrated Domestic Violence Courts"; Ontario Court of Justice, "Integrated Domestic Violence Court."

<sup>27</sup> Burton, "Domestic Abuse. Literature Review," 15.

<sup>28</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 95.

<sup>29</sup> *Ibid.*, 100.

<sup>30</sup> Christie, "Conflicts as Property," 6.

<sup>31</sup> Three Victims express performing follow-up calls and only the male Victim expresses doing a walk-in.

<sup>32</sup> Gramatikov and Porter, "Yes, I Can: Subjective Legal Empowerment," 6–7; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 11.

have to claim or to hold someone accountable. Further research needs to analyse the extent to which users of public services can be provided with funds or bonuses by the state to then be used to pay for services. This would imply an additional bureaucratic cost, but it might be worthwhile if people become aware of the cost that the “free” organizations carry to the state, and that Victims do have a chance to request and hold providers accountable.

Mediations are instances where Victims have the chance to directly participate in the decision-making of their complaints. Feelings of fear, stress, and instability that are encountered by Victims act as obstacles to enable free participation in mediation instances. Those feelings are often triggered by the fact that Victims do not know what they will encounter, and therefore negative feelings could be reduced if information is provided to Victims before mediation. Mediators perceive their role as one that serves to equalize parties and to place them away from their assigned role in complaints (i.e. accused and accuser). They do not judge whether what parties say is true or false, but focus on giving the chance to parties to express and to listen to what they say. OFAVyT and OVD are also highlighted by some Victims as a space where they are heard. Some Victims associate being heard with an opportunity to self-reflect. These methods that assist self-reflection are important for the LE process, as they provide spaces where Victims can develop an understanding of their capacities.

Receiving information by service providers as to what to expect in the different components of the process seems to contribute to Victims gaining confidence. The work of Christie serves to understand the process of LE every time he claims that the “ownership” of the legal problems should stay under the person who seeks help from the judicial system.<sup>33</sup> Justice providers and service providers have, therefore, an important role in the process of LE to inform on rights and options to allow Victims to continue being the owners of their legal problems. The strengthening of the delivery of accurate information can be one of the key elements to enable a confident participation of Victims in the legal procedure. If Victims become aware of the factors that contributed to their gaining of confidence while at the organizations, they can autonomously use those reflective techniques in the future. Therefore, they are gaining sustainable LE. As expressed by Blessed Hildegard Burjan: “We cannot help people with money and small offerings; rather we must give them the confidence that they are capable of doing something for themselves.”<sup>34</sup>

#### 6.2.3.3. *Quality of Assistance*

Victims assess quality of assistance by the extent to which they view providers as responsive. Victims address responsiveness of organizations as a symbol that triggers in them a feeling of care, support, protection, and confidence; and these feelings contribute to their understanding and reassurance that they have a right not to tolerate violence. In the long term all those feelings have an impact on the LE of Victims, because they contribute to reassuring them of their decision-making capacity to solve

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<sup>33</sup> Christie, “Conflicts as Property.”

<sup>34</sup> Blessed Hildegard Burjan available at American Catholic, “Minute Meditations - Building Confidence.”

problems. Other studies found a relation between the confidence of Victims in the judicial system and the responsiveness of the judicial system to their requests.<sup>35</sup> However, there is no evidence that quality of assistance is assessed by Victims by the extent to which they are able to understand or participate in the legal procedure.

The lack of chances Victims have to understand the information delivered by providers is considered an impediment to informed decision-making. Some key civil servants and justice providers consider it difficult to work with the capacity of Victims to understand and to make decisions because some Victims lack the minimum educational level to begin to grasp the provided information. The capacity to understand differs as to the Victims, and some service providers consider it difficult to comply with standardized requires by the PPO because systematization assumes that all Victims are prepared to understand and follow the same steps at the same pace. This affects the quality of assistance. Therefore, a single recipe ends up being followed to elaborate different dishes.

In addition to the lack of minimum education, personal distress also acts as an obstacle to understanding the information received. Genn argues similarly when finding that the components that allow for the reception of advice by people are determined by the moment when the advice is provided and by the way the person is prepared to elaborate and act.<sup>36</sup> Further studies need to be carried out in order to understand how the non-educated population can be assisted to allow for their possibility to make free decisions. These studies can build on previous studies that understand that even an illiterate person can have sufficient resources to manage a legal problem and that the lack of skills and capacities can be overcome with the help of others.<sup>37</sup>

The process of LE is possible only if providers work with the preferences and possibilities of Victims. In further steps, service providers can incorporate additional visual tools to inform, since these are considered easier to remember, together with experiences of other Victims, which are considered easier to associate. Fostering a network for Victims to communicate with each other can be a powerful tool to enable LE because Victims show empathy, care, and motivation to the experiences of others.

Key civil servants focus on the design of an organization that can respond to the needs of Victims in terms of accessibility defined by location and opening hours. The type of advice was also delivered and as a result OFAVyT was created to provide multidisciplinary assistance, and specialized prosecutor units were created to investigate domestic violence cases considered to be “high risk.” The specialized prosecutor units are important actors to push forward for a change in the understanding of how to assist Victims and what obstacles are present in the system

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<sup>35</sup> National Association of Community Legal Centers, “Access to Justice Arrangements,” 30; referred to in Leering, “Sabbatical Adventures # 6. Australia Leg – Australian Capital Territory (ACT). Commonwealth Productivity Commission and Commonwealth Attorney-General’s Office.”

<sup>36</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 99.

<sup>37</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 24–25.

for Victims to exercise their rights.<sup>38</sup> Key civil servants find as a main obstacle the lack of adaptability and flexibility by some justice providers and service providers. The working culture appears to be a risk to improving and sustaining the initiatives of the PPO. Training for those who provide assistance is considered essential for most key civil servants, service providers, and justice providers in order to allow them to grasp and work with concepts as understood within new paradigms.<sup>39</sup>

The space where services are delivered becomes an element addressed by some key civil servants, service providers, justice providers, and Victims. The e-space is considered mostly by key civil servants as a tool to improve the service of organizations. It allows for additional access points for people and a space for rights awareness to develop. Moreover, the e-space is mentioned as needed to perform joint activities and cooperate with other organizations. The physical space is also viewed as relevant and needs further development.<sup>40</sup> The waiting room is the space where Victims learn that other women face similar problems and therefore waiting rooms can become a space of reunion, reflection, and offer a chance to create a network.<sup>41</sup> Sociologists have studied the message that the design of an organization sends to those who access it. They note that people assimilate designs of organizations with specific spaces<sup>42</sup> and/or with systems of authority or hierarchies.<sup>43</sup> The current multidisciplinary approach described in this study to assist Victims and the incorporation of adversarial elements in the criminal justice system may also call for assimilation, this time of a physical space that transmits to Victims a space of inclusiveness, acceptance, and dialogue.

The quality of the response to the requests of Victims appears as important in legal provisions. In this sense, legal provisions address the importance of having a provider informed and trained to handle the specificities of the problems brought by parties. Legal Organizations incorporate training for providers, and there are efforts to improve the delivery of services. The incorporation of a monitoring process of the delivery of assistance seems to be necessary at this stage, in order to track policies constantly and to adjust them to the learnings that may derive from the particularities of domestic violence.

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<sup>38</sup> e.g. specialized prosecutor units increased the number of domestic violence cases that reached trial and adjusted the definition of the evidence brought by Victims.

<sup>39</sup> e.g. the acceptance of contextual evidence, the approach to alternative dispute resolution mechanisms, and the inclusion of parties in the search for solutions.

<sup>40</sup> e.g. (i) Units of Early Intervention designed the waiting rooms with signs and messages as to how individuals can exercise rights with the assistance of the PPO, and include a space for children to play; (ii) judges consider it important to hold court hearings in an open space because that space improves transparency and equality between parties; (iii) mediators strongly highlight the importance of having rooms that can facilitate communication; and (iv) other service providers also mention the importance of the physical space to allow privacy for Victims and for proper communication.

<sup>41</sup> OVD incorporated some innovative ideas in their waiting rooms (e.g. a TV) and also considered including storytellers.

<sup>42</sup> e.g. a hospital.

<sup>43</sup> Giddens, *Sociology*, 298–99 working with the concepts of Michel Foucault and Max Weber.

#### 6.2.3.4. *Calling for Synergy of Efforts*

The need for cooperation amongst organizations that share common objectives is being introduced into the text of legal provisions.<sup>44</sup> This synergy, however, is only in a very early stage of development. Coordination amongst different organizations at different levels is considered by legal provisions as necessary for the elimination of gender violence. Legal provisions lack concrete procedural rules to materialize the implementation of such cooperation. Key civil servants, service providers, and justice providers are concerned about the lack of communication and cooperation amongst organizations, considering this an obstacle to rights enablement.

Cooperation between organizations is an important element to allow for the joint performance of tasks, hence avoiding duplication of duties, and allowing comprehensive assistance. The lack of smooth cooperation and communication amongst organizations with a shared goal are viewed as an obstacle to good service because they delay tasks. Victims manifest saturation due to the increasing activities that complaints demand. Few Victims comply with all demands, and this results in the misuse of public resources due to the duplication of tasks and also the lack of real contribution to the resolution of conflicts.

Data collected by organizations is a valuable tool to evaluate the implementation of policies to eradicate violence against women. There is no sign of a synergetic use of that data to systematically evaluate the functioning of those organizations in the City. As observed in this study, and as understood also by Bruce et al., organizations are collectors of important data that can be used to diagnose the need for legal change.<sup>45</sup> For example, Legal Organizations in Australia and Canada publish assessment reports based on the data collected.<sup>46</sup>

#### 6.2.3.5. *Enforcement as a Goal*

There are differences as to how legal provisions, Legal Organizations, and Victims view the enforcement of rights as a sign of conflict resolution. Legal provisions address the right to a remedy and its relation to the enforcement of rights.<sup>47</sup> Furthermore, recent legal provisions incorporate adjustments to the enforcement of rights related to domestic violence.<sup>48</sup> Legal Organizations incorporate alternative dispute resolutions mechanisms and speed for the enforcement of rights. However, Victims rarely mention a desire for a concrete enforcement of a right and not always

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<sup>44</sup> e.g. Law 26485 calls for state cooperation to support and promote the equality between men and women.

<sup>45</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 31.

<sup>46</sup> e.g. Legal Aid Ontario, "Access and Justice."

<sup>47</sup> The Argentine Constitution states the overarching principle of the right of the people to petition the authority and to obtain a response. The City Constitution incorporates a list of organizations that can serve to hold the authorities accountable for their actions and omissions. Procedural and administrative legal provisions incorporate more concrete provisions to deal with (e.g. unnecessary delays, high monetary costs, and alternative dispute resolution mechanisms).

<sup>48</sup> e.g. Law 26485 provides different preventive measures available to judges to enforce and therefore, in domestic violence cases, the quality of providers gains relevance due to the availability of options.



view their problems solved after rights are enforced. Moreover, only one Victim understands how to enforce rights. Studies in the UK similarly indicate that Victims do not necessarily want a sentence for the accused, but rather, they want the abuse to stop.<sup>49</sup> Mediations are not understood by Victims as an instance of enforcement and, besides the agreement, most Victims highlight the opportunity that mediations give them to self-reflect. Mediation can be perceived as a mechanism that contributes to the process of awareness of the capacity to express desires. Victims and recent legal provisions associate delays in the system as an obstacle to enforcement. There seems to be a mismatch between the times of the law and the times of the Victims for enforcement. In addition, timely and efficient enforcement of rights in domestic violence cases remains one of the main challenges.

There is agreement on how justice providers, service providers, and Victims view the relation between enforcement and the presence of an authority capable of delivering orders and ensuring enforcement. These three actors associate judges and courts with a symbol of authority. Genn found similar results.<sup>50</sup>

#### 6.2.3.6. *Diverse Solutions*

Victims express that chances to solve a problem diminish if the accused do not show interest in reaching a solution. Even when preventive measures are instituted, if they are not respected by the accused, the system does not have effective tools to ensure enforcement. This concern is shared not only by some Victims, but also by justice providers and service providers.<sup>51</sup> This factor adds another element of complexity to achieving conflict resolution because legal provisions and justice providers and service providers do not have the capacity to enforce a non-desired conduct measure on the accused. The preventive measures and penalties are few and some of them are difficult to enforce given how legal provisions address conflicts. Advances are perceived, yet there is a need for further research on the type of conflict resolution needed to solve domestic violence problems.

Many criminal complaints at the PPO are filed away due to a lack of evidence, though Victims hardly ever mention evidence as an obstacle to enabling the solution to their problems. This is another example of the limited relation between Victims and their cases. Different results were found by the study performed by Antony García. There, Victims express difficulties in submitting evidence because the accused returned to the household and they fear to continue with their complaints.<sup>52</sup>

Another factor learned is that Victims do not stop having problems nor finding solutions to their problems after they submit complaints. Therefore, it is common to see a discrepancy as to when Victims consider their problems solved and when the

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<sup>49</sup> Burton, “Domestic Abuse. Literature Review,” 16–17.

<sup>50</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 226.

<sup>51</sup> e.g. as expressed by a Victim: “Measures are taken, but if the other party does not comply ... it is complex.”

<sup>52</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 286, referring to the study by Antony García titled “Las mujeres confinadas en América Latina.”

judicial system files away those complaints. Other times Victims become inactive in their criminal complaints because other problems appear or they decide to solve the problems themselves instead of waiting for the judicial system.<sup>53</sup>

Recent legal provisions stress the importance of considering the individuality of parties in conflicts and the characteristics of their problems to decide for proper remedies. Possible remedies, therefore, gained some flexibility. The focus varies from finding a fair punishment for abusers to granting Victims a right to resolve conflicts through suitable remedies. However, the lack of rights awareness in Victims is perceived as an obstacle to materializing their possibility to increase participation in their conflicts.

The approach to evidence, the multidisciplinary assistance, and the incorporation of alternative dispute resolution mechanisms are also changes that result from the incorporation of legal provisions that offer a different approach to conflict resolution. Some legal scholars and justice providers remain conservative in their approach to those three elements, especially remaining reluctant to a more flexible approach to evidence.<sup>54</sup> This group considers that clear evidence is the only tool that the judicial system has to ensure fair trial, the right to liberty, and the foreseeability of judicial decisions. The lack of clear evidence is mentioned by some justice providers as an obstacle to the speed of the enforcement of penalties, but prosecutors remark that the time gained since the unit became specialized allows them to put more efforts into collecting evidence. Consequently, some justice providers became the main actors responsible for a tailor-made understanding of the evidence in view of the particularities of domestic violence complaints.<sup>55</sup>

Alternative dispute resolution mechanisms, mainly mediations, are addressed by legal provisions as a strategy to approach parties in conflicts. There is discrepancy between key civil servants, justice providers, and service providers as to the extent to which mediations can be used in domestic violence complaints. Furthermore, legal provisions exclude mediation as an option for domestic violence cases. Mediators, however, are the only justice providers who agree on the use of this mechanism in domestic violence cases due to the chance given to Victims to face the accused and voice their will. Victims nevertheless do not express a negative or positive relation with mediation; and most times decide to participate in mediation based on how it is presented by service providers.<sup>56</sup> Notwithstanding this, if mediations are scheduled, most Victims fear for the reaction of the accused, and they fear the unknown.

Other studies, similarly but more broadly, revealed that fear is the main factor that negatively affects Victims in searching for and enforcing a judicial solution. It can be

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<sup>53</sup> e.g. 2 Victims moved to a different location unknown to the accused, while another Victim withdrew her right to child support to avoid contact with the accused.

<sup>54</sup> e.g. Zaffaroni, "Anteproyecto de Código Penal de la Nación," 47.

<sup>55</sup> e.g. justice providers presented convincing argumentation and obtained a ruling in favour of "contextual evidence" in domestic violence cases.

<sup>56</sup> e.g. if service providers highlight that mediation is beneficial for the accused because it "cleans" their records, Victims may not accept mediation; and, if service providers place mediation as the only remedy available for their cases, Victims would most probably accept it.

composed of fear of violence, deprivation, exclusion, and stigmatization.<sup>57</sup> Therefore, introducing techniques where parties can understand how the mediation is going to be performed, who is going to participate, and what tools are available to them to receive protection, may relieve fears, gain confidence, and contribute to a free communication. In addition, agreements of behaviour signed by parties before mediation can also be an option when Victims fear a violent reaction by the accused before and during mediation. Agreements between parties have shown in previous studies to resolve conflicts more efficiently than court decisions,<sup>58</sup> and it may be worth incorporating more instances during the process where parties agree to cooperate and not only use agreements as an outcome of the legal procedure.

Specialized and multidisciplinary assistance is recommended by legal provisions as a tool to enable the use of rights. This approach to assistance relates to the understanding of the problem beyond a legal conflict. Service providers, more than key civil servants and justice providers, doubt the capacity of the judicial systems to resolve comprehensible domestic violence cases without the assistance of other disciplines. The psychological dependency and the reduced capacity Victims have to make decisions, make the judicial system an incomplete tool for conflict resolution. Therefore, it is important to introduce tools to enhance the development of possibilities and freedoms in Victims. Introducing strategies, such as coaching techniques, could assist Victims in reflecting on their skills and competences and on how to use them in society.

#### 6.2.3.7. Professional Training

Theory on restorative justice and the incorporation of legal provisions following the concept, may lead to a more flexible judicial system that searches for resolutions to conflicts of Victims. However, this is not always the case, and key civil servants sometimes mention that lawyers are not always trained to understand what conflict resolution means for parties. As explained by a US specialist in domestic violence,

*[Lawyers] are geared for getting a court decision of custody, getting a court decision of separation or divorce, or earning income for their clients. That is what we are geared for. We are not geared for, 'Ok, we got this temporary order but they chose to reconcile,' because it is a process that survivors go through. Attorneys are lawyers. We do not go through school with the background in counselling or a background in how to provide emotional support.*<sup>59</sup>

This quotation applies directly to Victims. However, it can be extended to a broader aspect as to how lawyers are trained to resolve conflicts in the eyes of the law, yet not in the eyes of people. This reduces the possibility for people to genuinely solve their problems. Scholars address the need to redesign the legal profession and train lawyers

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<sup>57</sup> Barendrecht, Mulder, and Giesen, "How to Measure the Price and Quality of Access to Justice?" 14; Gramatikov and Porter, "Yes, I Can: Subjective Legal Empowerment," 25–26.

<sup>58</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 216.

<sup>59</sup> Attorney at Legal Aid in the US, In-depth Interview.

not to expropriate conflicts from victims,<sup>60</sup> and studies are currently being done on how to readdress the legal profession and legal education.<sup>61</sup>

#### 6.2.3.8. *Change in Paradigm*

Legal provisions developed in Argentina show a change in paradigm in the concept of access to justice, which incorporated an inclusive approach introduced primarily by international law and quickly adopted by domestic law. The inclusive approach to access to justice focuses on the accessibility in terms of location and means to access, such as office designs, courts, and service providers. Moreover, the approaches incorporated by legal provisions to make people aware of their rights include advertisements, geographical location of the units, and the use of the Internet. Inclusiveness in terms of incorporating legal terminology that is understandable by lay people is still to be further pursued. Legal provisions include tools, mechanisms, and programmes to enable Victims to use rights.

Proximity of the law and Legal Organizations to the community, the creation of multidisciplinary units, the implementation of clear and transparent procedures adjusted to the needs of people, and the broadening of channels of participation reveal a legal tendency aiming at increasing the chances of Victims to get hold of conflicts and to increase their participation in the legal procedure. There is limited evidence of legal provisions that implement strategies to allow Victims to make complaints by themselves. However, evidence was found at a City level in the internal regulations giving the option to submit complaints online. More tools to allow rights enablement could therefore be introduced in legal provisions.<sup>62</sup> Other countries, such as the US and the Netherlands, are advancing in this direction and lessons could be learned from their experiences.

### 6.2.4. Victims as Part of the Judicial System

#### 6.2.4.1. *Multiple Perceptions*

Victims, at the time of submitting their complaints, perceive that organizations are a place to turn to for help. However, there is limited understanding as to what the implications are of submitting complaints. It is also observed that along the process the majority of Victims follow instructions given by providers still without understanding the consequences. These findings relate to those of Genn, where respondents did nothing after they were advised by the access point not to do so.<sup>63</sup> Moreover, the findings relate to the objectives of legal provisions since the CCPC

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<sup>60</sup> Christie, "Conflicts as Property," 14.

<sup>61</sup> e.g. RCSL, "Website of the Research Committee on Sociology of Law (ISA)"; Susskind OBE, *The End of Lawyers?*; Mertz, *The Language of Law School: Learning To "think like a Lawyer"*; Leering, "Conceptualizing Reflective Practice for Legal Professionals."

<sup>62</sup> e.g. enabling mechanisms for the self-completion of pre-drafted forms (e.g. protective orders, private agreements) or creating platforms for Victims to exercise rights with the assistance of instructions that incorporate options and tools to assess options.

<sup>63</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 95. For further results on ignorance and rights awareness in the UK, see *ibid.*, 102.

gives victims the right to be informed and the chance to review the decisions of prosecutors to file away complaints. However, there is no right for Victims to have an active participation in the process and to have the capacity to steer decisions based on their own understanding of what conflict resolution would mean for their complaints.

Most Victims perceive their problems in simple terms and not as falling within the realm of the law. However, in most cases Victims express that their primary problems are the ones that pushed them to submit their complaints and the problems are expressed in a way that is assimilated to the legal provisions.<sup>64</sup> Victims mostly submit complaints with the simple desire to solve their problems. Genn obtained similar results in which the data show that the primary concern of people is to solve problems and that they normally have a sense of what “would constitute a right, or fair, or proper outcome to the problem, and achieving that outcome would amount to obtaining justice.”<sup>65</sup> Even when Victims experience this first association with rights, they seem to get lost in the legal procedure.

Victims mostly rely on the information provided and respond to suggestions made by organizations with limited understanding of what this information entails.<sup>66</sup> The risk in asking Victims to make decisions with limited understanding of the legal information is that they cannot exercise their own preferences or require certain performance from service providers. The limited understanding of rights blocks the possibilities of Victims to choose legal options merely because they do not know of their existence or of their implications. This study found that there is no direct relation between why Victims turned to the judicial system and how they perceive themselves as holders of rights. This finding confirms that of a previous study performed in Latin America by Antony García where Victims ignored the legal provisions that protect them.<sup>67</sup> Furthermore, Genn states that “there is a widespread feeling of ignorance about legal rights that exists across most social groups.”<sup>68</sup> There is evidence to state that rights are not known by people and that the judicial system is not contributing to allow for informed decision-making.

The first perception of Victims about what they will encounter is also the main foundation for the term “rights.”<sup>69</sup> The term “rights” in Spanish (i.e. *derecho*) derives from the Latin *directus* which also means “straight,” and legal scholars have associated “rights” with the image of a “straight” path that connects a problem with a solution.<sup>70</sup> This positivistic understanding on the function of rights is far from expressing what

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<sup>64</sup> e.g. “threats,” “harassment,” “child support,” “someone follows me,” “I want to separate.”

<sup>65</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 211–12.

<sup>66</sup> National Association of Community Legal Centers, “Access to Justice Arrangements,” 30; referred to in Leering, “Sabbatical Adventures # 6. Australia Leg – Australian Capital Territory (ACT). Commonwealth Productivity Commission and Commonwealth Attorney-General’s Office.”

<sup>67</sup> Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 286, referring to the study by Antony García titled “Las mujeres confinadas en América Latina.”

<sup>68</sup> Genn, *Paths to Justice: What People Do and Think about Going to Law*, 102.

<sup>69</sup> e.g. a Victim expresses that the judicial system is not always what it seems to be; in her words, “I thought that the judicial system would be straight and direct and would do everything fast.”

<sup>70</sup> Russo, *Teoría General del Derecho*, 18.

actually happens, though it serves as a reminder that rights are meant to serve as a tool to simplify access to a remedy.

Awareness of rights is recognized by legal provisions as a way to increase the participation of Victims in the process. Legal provisions stress the importance of educating against non-discriminatory behaviours from an early stage of life and view the state as the main agent capable of implementing policies to ensure non-discriminatory actions.<sup>71</sup> Legal provisions are important because they give concrete tools to implement a comprehensive approach, increasing then chances to grant rights. Some legal provisions address the right of Victims to be informed from the moment they obtain access to justice.<sup>72</sup>

Some justice providers perceive that today the judicial system is more colloquial and understandable. Moreover, some Victims were surprised that justice providers and service providers at PPO were not conservative in their attitude and way of dressing.<sup>73</sup> This non-conservative image creates a relaxing feeling in some Victims. Legal terminology, nevertheless, is not perceived as being flexible or as an effective channel of communication. Other channels of communication<sup>74</sup> used by organizations and suggested by legal provisions had a limited impact on Victims. However, it is difficult to assess which communication channels become more effective in the long term and in the short term in view of the ongoing process of rights awareness expressed by Victims. Technology is being developed by the PPO to become another source of rights awareness and enhancement. However, the introduction of technology remains local to the PPO, and key civil servants and service providers address the limitations they encounter to communicate with other organizations. It is worth noting the low degree of incorporation of technology in the process of rights awareness and enablement at the federal level.

LE is an element necessary to allow Victims to use legal information or legal options, and to require delivery of proper assistance. When Victims do not know their available options they cannot make informed decisions and their freedoms cannot be exercised. Hence, Victims are left with a single option: follow the directions of providers. Moreover, Victims do not have tools to require from the judicial system the delivery of actions, and they can only accept what is given, yet not require what could be provided. Paradoxically, Victims show a desire to have someone take over their problems and allow them a passive role. Most Victims are emotionally tired by the time they arrive at the doors of the judicial system and their capacity to make

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<sup>71</sup> The City Constitution and Law 26485 introduce legal provisions to eliminate obstacles to the understanding of the law and to eliminate discriminatory vocabulary that may be present in court decisions. The main advantages in terms of rights awareness are perceived in Law 26485 where there is a direct address on how information is to be provided (e.g. addressing the need to educate from an early age non-discrimination behaviours in order to ensure the right to no discrimination based on gender) and how to promote publicity to eliminate stereotypes.

<sup>72</sup> e.g. the Argentine Code of Criminal Procedure, Law 26485, the CCPC, the City Contravention Code, and internal regulations stress the rights of victims to be informed and the obligation of the judicial system to provide information from the moment victims approach access points.

<sup>73</sup> e.g. providers are “dressed in suits.”

<sup>74</sup> e.g. brochures, advertisements, TV.

decisions is reduced.<sup>75</sup> This can explain why lawyers are perceived as an important tool to enable the exercise of rights and why some Victims rely entirely on their lawyers.

An empowered person has the capacity to make informed decisions and understand consequences.<sup>76</sup> Choosing options offers an opportunity to exercise individual preferences.<sup>77</sup> Freedom and control can apply to how Victims are in charge of the events in their conflicts and how these events are in line with the respect of “freedoms [of the Victim] to lead the life that [they] would choose to lead.”<sup>78</sup> A call should be made for the strengthening of the participation of people in the search for solutions to their problems and for a flexible judicial system that provides tools that enable people to lead that search.

#### 6.2.4.2. *Culture and Finances*

The cultural background of Victims matters in their process of LE, especially in their process of rights awareness. For example, most Victims born and raised in Bolivia show a different relation to domestic violence since they do not consider it a problem until they are told by providers that they should not tolerate violence. In general, and as mentioned above, there is a general non-understanding of legal provisions and the functioning of organizations, though most Victims recognize that it is not acceptable to be mistreated. The recognition of problems by different cultures can assist in the implementation of personalized policies to tackle the specific needs of people in different neighbourhoods.

Children are mentioned as important tools to break cultural barriers to access to justice and to eradicate violence through education.<sup>79</sup> Key civil servants acknowledge that information provided to children has the potential to reach their parents. Some Victims express the pattern but mostly in relation to how children help them to access technology. Informative advertisements on how to prevent, recognize, handle, and end such relationships should also be available in those places because they reach Victims at the moment when they are with their children, who are most of the time placed as their main priority.<sup>80</sup>

The financial background does not seem to be determinant in enabling the use of resources. Some Victims explain that paying for a lawyer became an economic burden though few address it as an impediment. The Victims who constantly use certain resources receive that assistance for free.<sup>81</sup> Therefore, along similar lines to Genn’s

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<sup>75</sup> Attorney at Legal Aid in the US, In-depth Interview.

<sup>76</sup> Nussbaum, “Capabilities as Fundamental Entitlements: Sen and Social Justice”; Sen, *Development as Freedom*.

<sup>77</sup> Nussbaum, *Creating Capabilities*, 97–98.

<sup>78</sup> Sen, *Inequality Reexamined*, 65.

<sup>79</sup> See the example presented in Medina, Yuba, and González Magaña, *Violencia de género y violencia doméstica*, 88–92.

<sup>80</sup> e.g. parks, kindergartens, schools, movie theatres.

<sup>81</sup> e.g. Victims who constantly consult with lawyers about the steps to follow mention that they did not have to pay for the service, because they were friends or family.

findings, money does not seem to be a determinant in securing legal representation,<sup>82</sup> and the social network seems to become more important than money for Victims who secure constant legal information from lawyers. However, money appears as a source of entitlements, because Victims relate paying lawyers to the entitlement to require a service. Previous studies observe similarly and find that money is considered a resource to enable resolving conflicts with “legal means.”<sup>83</sup>

### 6.2.5. Engaging in the Policy Process

Understanding and regular involvement in a specific matter may trigger participation in the policy process. However, Victims do not express claiming for participation. There is one exception, since the Victim who is a lawyer specialized in domestic violence participates in a political party and in the development of a bill proposal to improve policies on domestic violence. Consequently, participation in the policy process is possible for Victims.

Communication amongst Victims is, nonetheless, observed and information is transferred. Almost every Victim expresses sharing their experiences with other Victims who had not yet submitted complaints, and recommended the submission of complaints and provided them with information on where to do so. It is not known where these transfers of information lead, but many Victims express empathy with other Victims and express feeling motivated to submit a complaint when listening to the accounts of other Victims. Accordingly, there are some hints to believe that blogs or networks where Victims can stay in contact and share experiences and decisions in domestic violence situations may contribute to their LE and ultimately may trigger participation in the policy process.

Exercising the right to vote and participation in political parties are the most inclusive ways of democratic participation.<sup>84</sup> Furthermore, additional channels of participation have been introduced by legal provisions.<sup>85</sup> The democratization of the judicial system is another step further in ensuring participation in the policy process since it allows for different groups to hold the power to make decisions reflecting the diversity of interests existing in society.<sup>86</sup> The new channels available to participate, however,

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<sup>82</sup> Securing a lawyer also appears not to be an impediment when comparing the chances to secure a lawyer between people from the lowest income bracket with the people from the highest. However, in the UK the legal aid offices appear to be the element that made this relation equal for both economic groups. In Argentina, it seems that those who cannot pay for lawyers ultimately find means to pay: they ask for monetary help; they save money and reduce other expenses; they delay the payment to their lawyers; or they count on lawyers who are also part of their social network, whom they do not pay. Few Victims rely entirely on the pro bono services in Argentina. For results in the UK, see Genn, *Paths to Justice: What People Do and Think about Going to Law*, 86.

<sup>83</sup> Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment,” 23–24.

<sup>84</sup> The Argentine Constitution contemplates orthodox ways of democratic participation. Voting and political parties were traditional channels of participation recognized by the Argentine Constitution; while semi-direct participation and popular consultation were introduced in 1994.

<sup>85</sup> e.g. ombudsman, public hearings, neighbourhood booths; and, e-platforms, apps, and telephone lines.

<sup>86</sup> e.g. gender quota laws and trial by jury introduced by the Argentine and City constitutions.



increase the need for an educational system that trains people with skills to understand and use those channels.

Legal provisions vaguely incorporate mechanisms for transparency and accountability.<sup>87</sup> Yet, there is further room to foster Victims' participation in the assessment of the process with the introduction of legal provisions that can structure the evaluation of programmes by Victims. This evaluation process might be better executed if it were not left to the final phase of the legal procedure, but rather if it were implemented in the form of active communication between Victims and organization as to factors that work and factors that could be improved.

#### **6.2.6. Active and Collective Role**

Legal provisions and organizations may act as frames within which members of society perform their duties. The common good is not exclusively the responsibility of legal provisions or organizations, but the responsibility of every member of society called to assist others in moments of despair. Despair reduces the possibilities and freedoms of many, including Victims, to think and structure a strategy to continue. Those facing despair, as observed from this study, many times lack the information to act, and therefore follow directions. Service providers, for a moment, make decisions for Victims, yet Victims have to assume the consequences. The use of individual freedoms is important to provide Victims with a chance to make personal informed decisions by selecting amongst available options. Victims are to be informed about their options and the expected consequences in order to participate in the decision-making process.

Anguish may impair Victims' ability to make conscious decisions as to what is best at the moment of submitting first complaints. However, in the process of LE it is important to start from the beginning to provide Victims with elements that reassure them in their decisions and inform them as to the consequences. It is not providers who know what is best for Victims, but the Victims themselves who know (or have to be assisted in that process) what their preferences are. Providers need to show confidence in Victims that they are capable of making decisions, pointing out the possible outcomes that those decisions may trigger. The role of service providers and their chance to objectively map the options and consequences for Victims are very valuable. Providers are not problem-solvers, they accompany Victims, and this is what most Victims take away from their access to justice.

Organizations are meant to structure the paths where providers perform their activities, and have to provide a welcoming environment for all parties to perform their work with diligence, by providing needed technology and a proper environment in which to perform duties. Those who access organizations seeking help, Victims in this study, do not think in terms of "laws," "organizations," "who is who," and "what is what." Victims vaguely learn after submission of complaints where they are. LE is a process that Victims have to experience. There is no one goal that the process of LE

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<sup>87</sup> e.g. impeachments.

aims to achieve. LE is expressed as the chance that Victims are given when they obtain access to the judicial system to solve their problems, not by getting rid of their problems, but by embracing their situations and slowly deciding how they want to position themselves within that scenario.

### 6.3. Recommendations

This study conveys that developments in legal provisions and Legal Organizations can legally empower Victims who obtain access to justice. Legal Empowerment is an approach to access to justice that focuses on the particularities of individuals to increase capacities to resolve conflicts and gain control over problems. It becomes an alternative to solving problems in view of the failure of penalties. Access to justice is confirmed to be embedded in the definition of LE,<sup>88</sup> while LE is understood as a non-orthodox approach to access to justice<sup>89</sup> that strengthens the possibilities and freedoms of individuals.

This study designed and applied a LE framework to legal provisions, Legal Organizations, and Victims to understand the relation between access to justice and LE. Legal provisions and Legal Organizations represent the law as a source to empower, while Victims represent the individual who exercises the process of LE when accessing to justice.<sup>90</sup> Victims are found as receivers of LE and as sources to legally empower other Victims. This sub-section recapitulates recommendations that can be considered for the incorporation of a LE approach to access to justice, though the complexity of domestic violence due to its multi-causality does not allow for overarching or conclusive recommendations.

It is hereby recommended that legal provisions and Legal Organizations further incorporate a LE approach because, even when access to justice might not entirely resolve a conflict, it can assist individuals to develop new tools to resolve conflicts. The incorporation of a LE approach demands developments in legal provisions, an adaptation of Legal Organizations, and the shaping of expectations of individuals. These new ideas encompass primarily the conviction that individuals are capable of resolving conflicts when providers work and assist in the exercise of capacities.

Access points are recommended to train providers to perform appropriate referrals because Victims do not assess the information received, but rather follow directions. Therefore, training and monitoring and evaluation of the activities performed by providers working at access points are hereby recommended to ensure the delivery of accurate information and emotional support. Developments in legal provisions and the creation of new Legal Organizations have shown to be doors to optional access points for Victims, although individuals do not always view new options and persist in approaching police stations. The new access points that were successfully inserted into

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<sup>88</sup> Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*, 6–8.

<sup>89</sup> *Ibid.*, 4.

<sup>90</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 29.

neighbourhoods are those that were characterized by Victims as being accessible and recognized as places that deliver trustful services.

This study hereby recommends further efforts to incorporate procedural legal provisions to assist providers in a consistent implementation of substantive rights. Moreover, procedural legal provisions are hereby recommended to give flexibility to providers to adapt to the needs of parties. An accurate assessment of the needs of parties also demands training providers. Moreover, further flexibility may increase compromise and enthusiasm of providers since they are allowed to actively participate in conflict resolution, to see the purpose of proposed options, and to welcome further innovations. It is, however, recommended that Victims be given a schedule with actions they need to perform in order to allow them to plan ahead. The sample has shown in this study that being unable to plan ahead may lead to non-compliance.

Multidisciplinary assistance is needed for conflict resolution and referrals become a key element in overcoming the limitations of Legal Organizations. E-governance techniques can be an appropriate means to keep different organizations communicating and updated on the occurrences and remedies that are attempted. This technique requires a significant allocation of resources, and it is hereby recommended as a policy in the long term. In the short term, however, an effective coordination amongst organizations can be designed, starting with a comprehensive understanding of what different organizations do, when each organization intervenes, and when and where organizations refer to other organizations. The homogenization of forms and reports that contain information that can be jointly used by different organizations is likewise hereby recommended to enhance communication and coordination.

Legal Organizations have to expressly enhance communication and coordination with organizations that tackle prevention and techniques for sustainable conflict resolution (mostly responding to the executive). Prevention techniques are hereby recommended to improve self-confidence, to eliminate gender stereotypes,<sup>91</sup> to give tools for people to recognize violence and solve problems, and to know where to seek assistance. It is hereby recommended that in domestic violence cases efforts be coordinated with sectors in charge of education, social security, safety, employment, and media. It is further hereby recommended that within the process of solving problems additional options that contribute to self-reflection be incorporated into the multidisciplinary assistance (e.g. religion, yoga, and meditation).

A responsive judicial system leaves in Victims a feeling of confidence, trust, and reassurance. It is therefore hereby recommended that further efforts be made not only to ensure speed, but that Victims be frequently updated about their legal procedures.

Further incorporation of mechanisms where Victims have the opportunity to meet the person who harmed them is recommended in some cases, because Victims are given another stage to be heard and to experience a discussion to compensate the harm.<sup>92</sup>

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<sup>91</sup> Stereotypes can be reduced by incorporating gender-neutral activities in the curriculums at schools (e.g. joint sports), and in channels of communication (e.g. avoiding TV shows or advertisements where women become mere objects to be assessed by men).

<sup>92</sup> Christie, "Conflicts as Property," 8–9.

Mediation, even when highly criticized, is hereby recommended for some cases with the incorporation of a clearly understandable and straightforward explanation to Victims as to how mediation works and a previous agreement of behaviour to ensure that Victims do not fear the reaction of the accused during and after mediation. Moreover, mediators are to be specialized in the characteristics of violent relations and only undertake mediation when Victims are empowered enough to freely express themselves in front of the accused, when Victims are not at risk of future violence, and when Victims can trust in a potential agreement.

This study hereby recommends that further tools be incorporated to translate the complexity of the law into tangible messages. Legal terminology appears as an obstacle to understanding, and brochures or written information (e.g. providers reading rights to Victims) are not remembered by Victims. However, it can be perceived that visual tools such as the reference to TV news with images instead of words may be more appropriate for an effective transmission of information (e.g. maquettes to represent a scene in the legal procedure, short stories on paper or computers to represent a scene with tips on how to present a complaint and what to do from there). Close monitoring of the information is needed because Victims have shown to believe in the information received, many times being misinformed and building false expectations. It is also hereby recommended that Victims be clearly informed of the potential consequences that actions in the legal procedure may bring, and hence to ensure that Victims start developing strategies to deal with possible consequences. This may also reduce the fear of the unknown or the unexpected.

It is hereby recommended that, besides legal procedures, Victims be given spaces composed of groups of Victims who share experiences, based on the fact that Victims demonstrate the ability to learn from peers, hence from a social network. For example, blogs for Victims to communicate anonymously and to schedule weekly meetings, where Victims can freely participate, may promote the sharing of experiences and strategies undertaken. This not only contributes to the LE of Victims but might also trigger groups that may later participate in the policy process. Moreover, this technique can be used to increase the access to justice of the Victims who lack a social network since, as shown by the sample in this study, there are reasons to believe that the support of a female peer is a needed element in deciding to submit complaints. Previous studies also address a relation between isolation and abuse, and between isolation and the reduced chances of Victims to seek help.<sup>93</sup>

Free services are often viewed as entitlements but not as an incentive to participate in the search for remedies.<sup>94</sup> Free services are also sometimes associated with low quality; particularly mentioned in relation to pro bono lawyers. It is hereby recommended to pilot, for example, a system of bonuses that people can use to request legal assistance. Bonuses can be given to people to “pay,” hence triggering participation and an entitlement to hold providers accountable.

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<sup>93</sup> Ibid., 7.

<sup>94</sup> Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment,” 24.

Some Victims consider the activities of the PPO to be a continuation of the activities of civil courts because they observe that the PPO continues with complaints even when not requested by Victims. Continuation of criminal complaints implies that Victims trust complaints to the capacity of the state to resolve them, without needing to participate in them, thus losing possession of their conflicts. Losing possession of conflicts appears beneficial for the sustainability of the legal procedure, yet not for the participation of Victims. The following is hereby recommended: the incorporation of strategies that enhance the participation of Victims in their conflicts by having the opportunity to receive options, understand them, and participate in the resolution of their conflicts. Multidisciplinary units are an additional step in contributing to the participation of Victims in their conflicts, and further efforts are hereby recommended to implement actions that allow Victims to experience themselves manifesting decisions, due to the positive impact Victims express when realizing through materialized actions that they are able to perform.

Complaints related to threats and harassments receive limited enforcement options and, therefore, it is hereby recommended that, within a flexible structure, providers work in developing a plan with parties to achieve a remedy. Regular meetings to ensure enforcement are recommended within this scheme. Moreover, the state may implement other techniques to support Victims who submit complaints so as to allow them to continue taking care of their obligations and structure a new life without the accused. For that purpose, it is hereby strongly recommended that the state accompany Victims with assistance limited in time and meant solely to help Victims in developing and starting to exercise a plan of action. For example, Victims could receive, during the first week after the enforcement of a preventive measure order, daily visits from social workers for some hours to discuss how to restructure the household and ensure that Victims make use of all social benefits. After the first week, Victims could continue with complaints in close contact with organizations, but with a structured plan made after consultation with professionals and having organized their basic needs. Legal Organizations can work jointly with NGOs to enhance the sustainability of the plan of action. In some cases, it is recommended that judges gain immediate physical presence due to the association made by some individuals with a symbol of authority.

Finally, it is also hereby recommended that parties recognize throughout the legal procedure that the exercise of rights also demands obligations. Therefore, legal provisions that incorporate possibilities for Victims to have resources to act and to know what their obligations are may be beneficial to enhancing their social role.

#### **6.4. Areas of Further Research**

There is a general need for empirical legal studies to continue understanding the relation between law and society. The points below address areas of further research on the capacity of all actors to actively participate in legal problems, and consider that these points need to be addressed before undertaking research on effective penalties.

#### **6.4.1. Enhancing Rights Awareness and Capacities**

Rights awareness is a fundamental element in the process of LE. Further studies should be welcomed to deepen the results found as to rights awareness as a tool to enable participation in the solution of problems. These studies may approach the type of information parties need to be able to participate in the legal procedure and to exercise their possibilities and freedoms. Moreover, studies have to address how that information needs to be delivered in order to incorporate it more consciously and targeted to ensure that parties understand their options and can make informed decisions. Lastly, research should be performed with pilots of different initiatives to introduce in the judicial system methods to enhance the awareness of rights in those who access, and considering the capacities of individuals in conflict.

#### **6.4.2. Communication and Cooperation**

There is a need for further studies on how to improve the communication and cooperation of the organizational network in order to maximize resources, reinforce cooperation, and improve the delivery of assistance with current resources available in the region. Communication is an issue that appears as an obstacle to the exercise of rights and to the proper delivery of assistance. Legal provisions contemplate the introduction of technologies; and key civil servants introduce within their organization better technologies to communicate internally. However, more research should be performed on the value of having an organizational network. On the one hand, it may help reveal the impact this might have in the state, in terms of costs by avoiding duplication of tasks.<sup>95</sup> On the other hand, it may help reveal the impact this might have on Victims to allow them to be connected with a supportive network of Victims encountering a similar situation, to be connected with their complaints, and with the organizations. With these results organizations or NGOs may offer a space where these networks can be fostered.

#### **6.4.3. Policy Evaluation**

The judicial system in Argentina lacks a comprehensive structure to evaluate policy in order to understand which aspects work and which aspects need to be improved and that could be applied to different organizations. Further research needs to be done to incorporate methods to evaluate judicial policies implemented, in order to ensure to the greatest extent possible that the judicial system responds to the needs of society. Without evaluation there is hardly any room for improvement; and efforts of societies represented in public funds are being misplaced. Moreover, further research needs to be done to foster suitable channels for people to participate in the judicial policy process and to be able to hold providers accountable.

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<sup>95</sup> e.g. asking questions, drafting similar reports, and trying similar remedies proved not to work for particular Victims.

#### 6.4.4. Regional Surveys

This study provides tools for the creation of a regional survey that can measure and assess access to justice and LE in Latin America. This study is a step further to understand what elements have to be measured in order to assess access to justice and LE.<sup>96</sup> As mentioned in the introduction to this study, national surveys to assess what type of legal problems people have and how they solve them need to be performed in the region.

Countries such as Australia, Canada, the Netherlands, the UK, and the US have developed national surveys to assess access to justice and the legal needs of their population. However, these surveys have not included the LE aspect, that is to say, the study as to how the law develops to assist the ones in need, and how people use the law as a tool to gain capacity and solve problems that obstruct the full exercise of rights. The present study can contribute to the development of such a survey.

#### 6.5. Final Words

The summary and reflections of this study apply to the legal problem of domestic violence. Some elements can be applicable to other legal problems with similar characteristics, as it has been shown when comparing some main findings with the results of Genn. However, further studies need to be performed in other areas of the law to grasp the relation between LE and different legal problems.

This study indicates that the role of actors helps understand the dynamics of a judicial system. Qualitative empirical legal research can be considered a powerful and needed methodological tool to understand the relation between law and society. Moreover, this study reflects on how legal provisions and organizations can contribute to LE. A change in paradigm is perceived as to how organizations approach access to justice and the way to assist Victims. Access to justice is being thought of in a decentralized way to bring people closer to the law; while assistance to Victims is done in a multidisciplinary way bringing a comprehensive approach to conflicts. Furthermore, legal provisions also changed to care more for the rights of vulnerable groups with the introduction of laws specifically aimed at targeted groups. Exercising rights is a key component of societies and gives people the chance to develop freely and to reach a real opportunity to obtain access to justice.

The LE framework helps visualize the tools that allow Victims to make decisions based on their possibilities and freedoms. Hence, the role of members of society is reaffirmed as one of company and cooperation, yet not as one of making decisions for others. The further incorporation of LE elements by organizations and legal provisions is justifiable because it focuses on the development of individual possibilities and freedoms of those who obtain access to justice. LE calls for a judicial system that can accompany parties along their path to solve problems with

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<sup>96</sup> Macdonald states the need to develop empirical studies in order to complement abundant normative legal studies and provide evidence on what needs to be measured and how, see Macdonald, Roderick A., "Access to Civil Justice," 516.

information and assistance that will ultimately allow parties to exercise rights. The way legal provisions are drafted and organizations designed should no longer be an obstacle to access to justice and to reaching LE. Fostering rights awareness in society, and hence in Victims, appears as the main tool to allow individuals to voice themselves.





## Annexes

Annex 1. Matrix for Legal Provisions

Rights Components	Guiding Right 1 Free of Violence	Guiding Right 2 Access to Justice	Guiding Right 3 Remedy	Guiding Right 4 Democratic Participation
Enhancement	<ul style="list-style-type: none"> <li>▪ Developments in the law recognizing the right of women to a life free of violence and discrimination.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advancement in the law that eliminates restrictions or brings opportunities for vulnerable groups to have access to justice.</li> <li>▪ Developments in the letter of the law that create clear legal rights for vulnerable groups.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inclusion of procedural tools that are easy to use, access, and afford.</li> <li>▪ Developments in mechanisms that help to ensure a fair process, with the right to be heard, transparency, and ways to hold authorities accountable.</li> <li>▪ Developments in the process that allow individuals to opt for continuing with legal procedures, instead of continuing to live in conflict, or looking for other solutions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal provisions that guarantee representation of vulnerable groups in the policy process.</li> </ul>
Awareness	<ul style="list-style-type: none"> <li>▪ Adequate understanding by policymakers of the situation lived by Victims.</li> <li>▪ Understanding where vulnerable groups are located in order to apply special policies to make them aware of their rights.</li> <li>▪ Advertisements to improve legal literacy of</li> </ul>	<ul style="list-style-type: none"> <li>▪ Extent to which the language of the law is simple to be used as a means to communicate rights.</li> <li>▪ Advertisements to improve legal literacy of Victims.</li> <li>▪ Materials to inform population on rights in plain language and oriented to a specific population.</li> <li>▪ Ensure that providers are</li> </ul>	<ul style="list-style-type: none"> <li>▪ Laws requiring public notice and hearings on legal issues affecting Victims.</li> <li>▪ Advertisements to improve legal literacy of Victims.</li> <li>▪ Materials to inform population on rights in plain language and oriented to a specific population.</li> <li>▪ Ensure that providers are aware of the changes in the law and procedures.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advertisements to improve legal literacy of Victims.</li> <li>▪ Materials to inform population on rights in plain language and oriented to a specific population.</li> <li>▪ Ensure that providers are aware of the changes in the law and procedures.</li> </ul>

Rights Components	Guiding Right 1 Free of Violence	Guiding Right 2 Access to Justice	Guiding Right 3 Remedy	Guiding Right 4 Democratic Participation
	<p>Victims.</p> <ul style="list-style-type: none"> <li>Materials to inform population of rights in plain language and oriented to a specific population.</li> <li>Ensure that providers are aware of the changes in the law and procedures.</li> </ul>	<p>aware of the changes in the law and procedures.</p>		
Enablement	<ul style="list-style-type: none"> <li>Mechanism introduced to allow for the use of rights of Victims.</li> </ul>	<ul style="list-style-type: none"> <li>Organizations that are accessible to the vulnerable population.</li> </ul>	<ul style="list-style-type: none"> <li>Programmes to train providers to help and explain to Victims how to process claims (capacity building) so they can do it themselves.</li> <li>Programmes that help Victims overcome disadvantages they have when trying to exercise their rights.</li> </ul>	<ul style="list-style-type: none"> <li>Ways and programmes that enable Victims to participate in the policy process.</li> </ul>

<div>Rights</div> <div>Components</div>	<div>Guiding Right 1</div> <div>Free of Violence</div>	<div>Guiding Right 2</div> <div>Access to Justice</div>	<div>Guiding Right 3</div> <div>Remedy</div>	<div>Guiding Right 4</div> <div>Democratic Participation</div>
<div>Enforcement</div>	<ul style="list-style-type: none"> <li>■ Provision of different avenues for Victims to seek justice (e.g. decentralized courts, specialized tribunals, and mobile courts).</li> <li>■ The extent to which the legal procedure is accessible in terms of cost and simplicity.</li> <li>■ Alternative dispute resolution mechanisms available in the law and support of organizations to facilitate their functioning.</li> <li>■ Existence of organizations to enforce collective rights of Victims.</li> <li>■ Provisions to facilitate oral rather than written evidence, and hence expedite cases.</li> </ul>	<ul style="list-style-type: none"> <li>■ Independent and transparent judicial system.</li> <li>■ Judges who are well paid, well trained, and have high ethical standards.</li> <li>■ Procedures that are accessible and efficient, without unnecessary delays.</li> </ul>	<ul style="list-style-type: none"> <li>■ Judges are fair and impartial when applying the law.</li> <li>■ Avenues provided for Victims to seek justice (e.g. decentralized courts, specialized tribunals, and mobile courts).</li> <li>■ Legal procedures in terms of cost and simplicity.</li> <li>■ Alternative dispute resolution mechanisms available in the law and support of organizations to facilitate their functioning.</li> <li>■ Existence of organizations to enforce collective rights of Victims.</li> <li>■ Provisions to facilitate oral rather than written evidence, and hence expedite cases.</li> </ul>	<ul style="list-style-type: none"> <li>■ The judicial system has clear ways for people to enforce the right to participate in the policy process.</li> </ul>

## Annex 2. Matrix for Legal Organizations

Actors Components	Guiding Actor 1 Key Civil Servants	Guiding Actor 2 Justice Providers	Guiding Actor 3 Service Providers
Enhancement	<ul style="list-style-type: none"> <li>▪ Motivation for the structure of the organization.<sup>1</sup></li> <li>▪ Developments in the organization that create real opportunities for people and Victims to claim for guiding rights.</li> <li>▪ Strategies to improve access to justice, particularly for Victims.</li> <li>▪ Strategies to reach remedies, particularly for Victims.</li> <li>▪ Strategies to improve environment free of violence, particularly for Victims.</li> <li>▪ Strategies to increase democratic participation, particularly for Victims.<sup>2</sup></li> <li>▪ Resources for implementation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Perceptions of the specialized units and adversarial system to allow conflict resolution.</li> <li>▪ Challenges faced on a daily basis.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Domestic violence as a legal problem (Q. 2).</li> <li>▪ Judicial system as developed to resolve conflicts (Q. 10).</li> <li>▪ Development of specialized and multidisciplinary assistance to resolve conflicts (Q. 11).</li> <li>▪ Importance of trust of Victims in OFAVyT and organizations (Qs. 18 - 19).</li> <li>▪ Structure of OFAVyT to assist Victims in resolving conflicts (Q. 21).</li> <li>▪ Quality of service providers (Q. 22).</li> <li>▪ Challenges faced by service providers (Qs. 26 - 27).</li> <li>▪ Place for improvement (Q. 24).</li> </ul>
Awareness	<ul style="list-style-type: none"> <li>▪ Mechanisms to increase rights awareness, particularly of Victims.</li> <li>▪ Mechanisms to increase rights awareness of providers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The importance of having Victims understand what is happening in their cases.</li> <li>▪ Awareness of importance of</li> </ul>	<ul style="list-style-type: none"> <li>▪ Perception of awareness of rights by Victims (Qs. 3 - 6).</li> <li>▪ Awareness as a tool for empowerment (Q. 23).</li> </ul>

<sup>11</sup> Child, *Organization*, 5.

<sup>2</sup> Bruce et al., "Legal Empowerment of the Poor: From Concepts to Assessment," 10.

	<ul style="list-style-type: none"> <li>■ Identification of obstacles to rights awareness.</li> <li>■ Motivations for introducing awareness actions.</li> <li>■ Implementation of legal literacy campaigns.</li> <li>■ Means used to make the population and providers aware of rights.</li> </ul>	gender perspective.	
Enablement	<ul style="list-style-type: none"> <li>■ Organizations as agent for enablement.<sup>3</sup></li> <li>■ Strategies designed to provide procedural assistance to Victims.</li> <li>■ Perception of organizations by the community, and communication with target group (e.g. training locals in the community).</li> <li>■ Capacity-building approaches that are adjusted to different groups.<sup>4</sup></li> <li>■ Recognition of experiences of vulnerable groups.<sup>5</sup></li> </ul>	<ul style="list-style-type: none"> <li>■ Perception of the role of Victims in the process.</li> <li>■ Elements needed to allow for investigation.</li> <li>■ Role of the characteristics of Victims to contribute to the investigation.</li> </ul>	<ul style="list-style-type: none"> <li>■ Advantages of OFAAyT (Q. 1).</li> <li>■ Rights enablement after Victims meet service providers (Qs. 7 - 9).</li> <li>■ Importance of having Victims recognize their responsibility in conflicts (Q. 12).</li> <li>■ Self-perception as a component of conflict resolution (Q. 13).</li> <li>■ Characteristics of Victim to conflict resolution (Q. 25).</li> <li>■ Relation between access to PPO and enabling resolution of conflicts (Qs. 16 - 17).</li> <li>■ Coordination with other organizations to achieve conflict resolution (Q. 20).</li> <li>■ Bureaucratic barriers faced by Victims (Qs. 28 - 29).</li> </ul>

<sup>3</sup> Ibid., 20.

<sup>4</sup> Ibid., 23.

<sup>5</sup> Ibid.

Enforcement	<ul style="list-style-type: none"> <li>▪ Design and implementation of policies towards rights enforcement, transparency, and accountability.</li> <li>▪ Alternative dispute resolution as a mechanism to improve rights enforcement.<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Elements needed for the enforcement of rights.</li> <li>▪ Private representation contributing to enablement and enforcement of rights.</li> <li>▪ View on different mechanisms to enable conflict resolution (e.g. mediation, probation).</li> <li>▪ Mediation as a tool for empowerment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Favourable results for Victims (Q. 14).</li> <li>▪ Chances of Victims to obtain those results (Q. 15).</li> <li>▪ Elements needed for effective conflict resolution (Q. 16).</li> </ul>
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<sup>6</sup> Ibid., 27.

Annex 3. Matrix for Individuals

<div>Actor</div> <div>Components</div>		Victims
Enhancement		<p>All aspects apply before, during, and after Victims submit complaints; and apply within a six-month period from first interviews.</p> <ul style="list-style-type: none"><li>▪ Development of individual strategies (and perception of law as a tool for assistance).</li><li>▪ Motivations to act.</li><li>▪ Experiences of change (e.g. personal life, actions, objectives, perception of resources).</li><li>▪ Channels used to participate (e.g. role perception, democratic participation).</li></ul>
Awareness		<ul style="list-style-type: none"><li>▪ Perception of legal problems.</li><li>▪ Rights in the vocabulary of Victims.</li><li>▪ Way in which awareness of rights affects decision-making of Victims.</li></ul>
Enablement		<ul style="list-style-type: none"><li>▪ Resources used.</li><li>▪ Paths to resources.</li><li>▪ Choosing resources.</li><li>▪ Relation with resources.</li><li>▪ Consequences of using resources.</li></ul>
Enforcement		<ul style="list-style-type: none"><li>▪ Responding to requests and requires from the judicial system.</li><li>▪ Paths to rights enforcement.</li></ul>



#### **Annex 4. Thematic Interview Guide for Key Civil Servants**

Responsive interviewing techniques were used to interview key civil servants. The questions below are therefore only a way in which to provide readers with a sense of the list of themes considered originally by the Researcher. Additional themes were added during the interviews depending on the particular functions of the interviewee, the answers provided by interviewees, and the lessons learned from previous interviews.

Key civil servants were first introduced to the topic of the research and the professional experience of the Researcher. They were then asked for their consent to participate and to have the conversation recorded.

##### **Main Themes**

- 1) Principal goals and objectives when you started your function at the PPO.
- 2) Elements considered for the creation of the PPO or the division (adjusted to the interviewee).
- 3) Structure and functioning of the division.
  - Prompt: relation with the personnel, training offered, advantages and disadvantages of the multidisciplinary assistance.
- 4) Relation between organizational design and access to justice.
  - Prompt: advantages and obstacles that are currently faced by the organization to ensure access to justice for all.
- 5) Relation with other organizations.
  - Prompt: how referrals are performed, means and procedures to perform communications.
- 6) After these years working at the PPO, things that appear to work and things that need further development (advantages and challenges).
- 7) View on alternative dispute resolution mechanisms for effective conflict resolution implemented today at the PPO.

## **Annex 5. Thematic Interview Guide for Justice Providers**

The interviewing techniques and structure are the same as the ones described in the interview guide for key civil servants (annex 4).

### **Main Themes**

- 1) Advantages of applicable legal provisions to assist Victims.
  - Probe: examples.
- 2) Disadvantages of applicable legal provisions to assist Victims.
  - Probe: examples.
- 3) Advantages of the organizational design to assist Victims.
  - Probe: examples.
- 4) Disadvantages of the organizational design to assist Victims.
  - Probe: examples.
- 5) Relation with other providers and Legal Organizations.
  - Prompt: how is the relation materialized? means of communication, topics of communication.
- 6) Main challenges faced on a daily basis.
- 7) Perceptions on the characteristics of the people who are assisted.
  - Prompt: challenges faced and strategies to overcome them.
- 8) Particularities of domestic violence cases.
  - Prompt: challenges when assisting, examples, description of the characteristics of an “ideal” case (i.e. a case with all elements present to assist in conflict resolution).

## Annex 6. Online Interview to Service Providers of OFAVyT<sup>1</sup>

### I. First Part – Introduction

The introduction includes a letter to the service providers with: i) title of the study; ii) approximate time needed to complete the interview; iii) name and institutional affiliation of researcher; iv) reasons for asking questions; v) description of the study; vi) reference to code of ethics of Maastricht University; vii) number of questions in the interview; and viii) request for consent to participate in the study.

### II. Second Part: Information about the Service Provider

1) Please mark to which age range you belong:

- a. Below 25 years old ☐
- b. Between 26 – 31 years old ☐
- c. Between 32 – 36 years old ☐
- d. Above 36 years old ☐

2) Please mark how long you have been working for OFAVyT:

- a. Less than 1 year ☐
- b. Between 2 – 3 years ☐
- c. Between 4 – 5 years ☐
- d. More than 5 years ☐

3) What is your current position at OFAVyT?

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4) Please mark your profession/occupation:

- a. Student ☐
- b. Lawyer ☐
- c. Psychologist ☐
- d. Social worker ☐
- e. Other ☐ \_\_\_\_\_

5) Please mark how long you have been licenced to practise:

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<sup>7</sup> The original Spanish online interview was translated into English by the Researcher. The following sources were used to design the questions: Buvinic, Morrison, and Shifter, “Violence in Latin America and the Caribbean: A Framework for Action”; Poder Ejecutivo de la Nación, *Decreto Reglamentario 1011/2010*; Smith et al., “Mapping Legal Need: A Spatial Analysis of Legal Need in Australia”; Sansó, “El Desarrollo de Un Servicio de Asistencia a Víctimas Y Testigos En La Justicia de La Ciudad Autónoma de Buenos Aires: Evaluación Y Estado de Situación”; Gramatikov and Porter, “Yes, I Can: Subjective Legal Empowerment”; Bruce et al., “Legal Empowerment of the Poor: From Concepts to Assessment”; Van De Meene and Van Rooij, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-Operation*; HüL, “Towards Basic Justice Care for Everyone, Challenges and Promising Approaches”; Alsop, Bertelsen, and Holland, *Empowerment in Practice*; Golub and IDLO, *Legal Empowerment: Practitioner’s Perspectives*; Mendell, “EMPOWERMENT.”

- a. I am not licenced ☐
  - b. Less than 1 year ☐
  - c. Between 2 – 5 years ☐
  - d. Between 6 – 10 years ☐
  - e. More than 10 years ☐
- 6) Based on your experience, how would you define the following terms?
- 1. Victims (without limiting to victims of domestic violence) \_\_\_\_\_
  - 2. Conflict \_\_\_\_\_
  - 3. Domestic violence \_\_\_\_\_
  - 4. Empowerment \_\_\_\_\_
  - 5. Access to justice \_\_\_\_\_

### III. Third Part: Questions

1) Please list at least three of the main advantages that the existence of OFAVyT provides to victims of domestic violence. List them in order of importance, the first one being the most important.

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

2) Based on your criteria, “domestic violence” is:

You can select more than one option. If you select more than one option, please classify these options in order of relevance, 1 being the most relevant, 2 the second most relevant, and so on.

- a. Legal problem ☐ \_\_\_\_\_
- b. Welfare problem ☐ \_\_\_\_\_
- c. Psychological problem ☐ \_\_\_\_\_
- d. Economic problem ☐ \_\_\_\_\_
- e. Social problem ☐ \_\_\_\_\_
- f. All of the above ☐ \_\_\_\_\_
- g. Other ☐ \_\_\_\_\_

Why do you consider it this way? If you have selected more than one option, please classify the selected options on a 1 to 6 scale, 1 being the most relevant, 2 the second most relevant, and so on.

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3) When you have the first personal contact with a victim of domestic violence, do you think that at that moment they know the rights they are entitled to?

- a. Yes ☐ go to Question 4
- b. No ☐ go to Question 7
- c. Some yes, some no ☐ go to Question 5

4) [Only those who answered “yes” to Question 3]. Which rights do victims frequently recognize as having entitlement to?

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5) [Only those who answered “some yes, some no” to Question 3]. Do you think that those victims who recognize their rights have personal, social, and economic characteristics that differentiate them from those victims who do not recognize their rights? Which characteristics?

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6) Which rights do those victims who recognize their rights most frequently recognize?

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7) When you have the first personal contact with a victim of domestic violence, do you think that at that moment victims can understand the legal options they have to resolve their conflicts?

- a. Never ☐
- b. Rarely ☐
- c. Neither always, nor never ☐
- d. Sometimes ☐
- e. Always ☐

Why do you think this is the case?

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8) How do you think the first contact by OFAVyT with victims of domestic violence affects their legal capacity to resolve their conflicts?

- a. Highly reduces the capacity ☐
- b. Reduced the capacity ☐
- c. Neither reduces nor increases the capacity ☐
- d. Increases the capacity ☐
- e. Highly increases the capacity ☐

Why do you think this happens?

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9) How do you think later contacts (that is to say, those that occur after the first contact) by victims of domestic violence with OFAVyT affect their legal capacity to resolve their conflicts?

- a. Highly reduces the capacity ☐
- b. Reduces the capacity ☐
- c. Neither reduces nor increases the capacity ☐
- d. Increases the capacity ☐
- e. Highly increases the capacity ☐

Why do you think this happens?

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10) How do you think the judicial system contributes to effective conflict resolution?

- a. Does not contribute at all ☐
- b. Does not contribute ☐
- c. Neither contributes nor does not contribute ☐
- d. Contributes ☐
- e. Highly contributes ☐

Which factors did you consider when selecting your answer?

---

11) How do you think the assistance provided by OFAVyT contributes to effective conflict resolution?

- a. Does not contribute at all ☐
- b. Does not contribute ☐
- c. Neither contributes nor does not contribute ☐
- d. Contributes ☐
- e. Highly contributes ☐

Which factors did you consider when selecting your answer?

---

12) Do you think it is important that victims of domestic violence recognize what their responsibility in their conflict is in order to achieve conflict resolution?

- a. Not important at all ☐
- b. Not important ☐
- c. Neither important nor not important ☐
- d. Important ☐
- e. Very important ☐

Why do you think this?

---

13) Do you think that the way in which victims of domestic violence perceive themselves as being capable of resolving conflicts contributes to a positive outcome?

- a. Does not contribute at all ☐
- b. Does not contribute ☐
- c. Neither contributes nor does not contribute ☐
- d. Contributes ☐
- e. Highly contributes ☐

Why do you think this?

---

14) Based on your experience, what do you think victims of domestic violence consider a positive outcome?

---

15) What are the chances that victims of domestic violence achieve the positive outcome you mentioned in Question 14?

- a. Chances are very small ☐
- b. Chances are small ☐
- c. Chances are moderate or small ☐
- d. Chances are moderate ☐
- e. Chances are great ☐

Why do you think this? \_\_\_\_\_

16) What do you consider an effective conflict resolution for victims of domestic violence?

---

17) How does access to the PPO (including here the assistance provided by OFAVyT) by victims of domestic violence contribute to the effective conflict resolution mentioned in Question 16?

- a. Does not contribute at all ☐
- b. Does not contribute ☐
- c. Neither contributes nor does not contribute ☐
- d. Contributes ☐
- e. Highly contributes ☐

How does it specifically contribute?

---

18) Do you consider it important that victims of domestic violence have trust in the organization?

- a. Not important at all ☐
- b. Not important ☐
- c. Neither important nor not important ☐
- d. Important ☐
- e. Very important ☐

Why do you think this?

---

19) Do you consider it important that victims of domestic violence have trust in the performance of the personnel of OFAVyT?

- a. Not important at all ☐
- b. Not important ☐
- c. Neither important nor not important ☐
- d. Important ☐
- e. Very important ☐

Why do you think this?

---

20) How relevant do you consider the collaboration of OFAVyT with other organizations is in order to properly assist victims of domestic violence ?

- a. Very irrelevant ☐
- b. Irrelevant ☐
- c. Neither relevant nor irrelevant ☐
- d. Relevant ☐
- e. Very Relevant ☐

Why do you consider the collaboration in that way?

---

21) Do you think that the way in which OFAVyT is structured today helps victims of domestic violence to resolve their conflicts?

- a. Does not help at all ☐
- b. Does not help ☐
- c. Neither helps nor does not help ☐
- d. Helps ☐
- e. Helps a lot ☐

Why do you consider it in that way?

---

22) To what extent are you **confident** that your professional intervention can assist victims of domestic violence to complete the following actions?

For the actions below, please rate your confidence by recording a number from 1 to 10, 1 being "I definitely cannot assist on this" and 10 "I can definitely assist."

- a. I can assist victims to understand the legal situation they are facing. [Scale]
- b. I can assist victims to understand the legal options they have. [Scale]
- c. I can assist victims to understand their rights and obligations. [Scale]
- d. I can assist victims to understand the role of the judicial system. [Scale]
- e. I can assist victims in receiving organizational support. [Scale]
- f. I can assist victims to understand the situation that they are going through, beyond the legal aspect. [Scale]
- g. I can assist victims to understand their role in achieving conflict resolution. [Scale]



- h. I can assist victims to understand their responsibility in achieving conflict resolution and not to fall back into the same conflict. [Scale]
- i. I can assist victims to obtain the capacity to recognize themselves as victims. [Scale]
- j. I can assist victims by listening to them and giving them the chance to express themselves. [Scale]
- k. I can assist victims to receive personal strength. [Scale]
- l. I can assist victims in getting referrals to additional assistance that they might need. [Scale]

23) Which is the main tool of empowerment given by OFAVyT?

- a. Legal information ☐
- b. Referrals ☐
- c. General information ☐
- d. Financial assistance ☐
- e. Psychological support ☐
- f. Other ☐ \_\_\_\_\_

Why do you consider the selected tools as the principal tools of empowerment given by OFAVyT to victims of domestic violence?

24) How do you think that OFAVyT can be more helpful to victims of domestic violence?

25) To what extent do you consider the following 11 personal characteristics of victims of domestic violence affect their possibilities to resolve their conflicts?

(Rate these factors from 1 to 11, 1 being the one that affects the most and 11 the one that affects the least)

- a. Gender \_\_\_\_
- b. Age \_\_\_\_
- c. Income level \_\_\_\_
- d. Economic independence \_\_\_\_
- e. Level of education \_\_\_\_
- f. Knowledge of their rights \_\_\_\_
- g. Emotional elements (e.g. fear, stress, sadness, and loss/change of relations) \_\_\_\_
- h. Being in an abusive relationship \_\_\_\_
- i. Distrust in public institutions \_\_\_\_
- j. Social context \_\_\_\_
- k. Other \_\_\_\_

Please specify which "Other" personal characteristic you considered:

26) What are the main challenges you face when assisting victims of domestic violence? Please feel free to use an example if this helps to clarify your answer.

---

27) How do you overcome the challenges mentioned in Question 26?

---

28) What do you consider the main **bureaucratic barrier** that victims of domestic violence face during the process and to resolve their conflicts? (Excluding the assistance provided by OFAVyT)

- a. Process is too long ☐
- b. Process is too complicated (e.g. completion of forms, gathering of evidence) ☐
- c. Process is not adapted to the reality of victims (e.g. job schedule, physical distance to organization) ☐
- d. Process is not adapted to the level of understanding of victims ☐
- e. Process is too costly ☐
- f. Other(s) ☐

Please indicate which Other(s) factor(s) you considered:

---

Why do you consider this the principal bureaucratic barrier? If you selected more than one barrier, please classify your options on a 1 to 6 scale, 1 being the most relevant, 2 the second most relevant, and so on.

---

29) What do you consider the main **bureaucratic barrier** that victims of domestic violence have to face during the assistance process provided by OFAVyT?

- a. Assistance is too short ☐
- b. Assistance is not personalized ☐
- c. Assistance is diluted by the complexity of the many conflicts ☐
- d. Assistance is not adapted to the reality of victims (e.g. job schedule, physical distance to organization) ☐
- e. Assistance is not adapted to the level of understanding of victims ☐
- f. Other(s) ☐

Please indicate which Other(s) factor(s) you considered:

---

Why do you consider this the principal bureaucratic barrier? If you have selected more than one barrier, please classify your options on a 1 to 6 scale, 1 being the most relevant, 2 the second most relevant, and so on.

---

**Thank you very much for participating in this interview.**

**Annex 7. Questionnaire for Victims<sup>8</sup>**

[\_\_\_\_], [\_\_\_\_], 2013

Volunteer questionnaire to understand how access to organizations that provide assistance helps solve problems. For this, I would like to ask you some questions.

Do you agree to answer these questions? **Yes – No**

**I) First Part**

1) How did you learn of the existence of OFAVyT (Office to Assist Victims)?

- |   |                                      |
|---|--------------------------------------|
| a. Police                                 | <input type="checkbox"/>             |
| b. OVD (Domestic Violence Office)         | <input type="checkbox"/>             |
| c. Family / friends / acquaintances       | <input type="checkbox"/>             |
| d. Advertisements in newspapers, TV, etc. | <input type="checkbox"/>             |
| e. They called and asked me to come       | <input type="checkbox"/>             |
| f. I do not know what OFAVyT is           | <input type="checkbox"/>             |
| g. Others                                 | <input type="checkbox"/> Which ones? |

1) From whom did you learn of the places you approached to seek help?

---

<sup>8</sup> The original Spanish questionnaire was translated into English by the Researcher. Sources used to create this questionnaire include: Question 6, 7, and 8 were created and suggested by Robert Porter, who shared these questions, adapting for Victims the scale he used in his research on subjective legal empowerment. Question 5 was created by Liz Curran Curran, “We Can See There’s a Light at the End of the Tunnel Now, Demonstrating and Ensuring Quality Service to Clients.” In addition, the following general sources were used: Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*; Graham R. Gibbs, “Questionnaire Layout & Question Wording. Part 2 of 3 on Questionnaire Design”; Graham R. Gibbs, “Ratings & Scales. Part 3 of 3 on Questionnaire Design.” Golub, “Beyond Rule of Law Orthodoxy”; Rooij and Benjamin, “Bringing Justice to the Poor”; Gargarella, “Too Far Removed from the People” Access to Justice for the Poor: The Case of Latin America”; Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*. UNDP, “Manual de políticas públicas para el acceso a la justicia. América Latina y el Caribe”; Echeburúa et al., “Escala de predicción del riesgo de violencia grave contra la pareja–Revisada–(EPV-R)”; Duarte and Console, “Las Oficina de Asistencia a la Víctima y su rol sobre la victimización secundaria”; Duarte and Console, “Tiempos judiciales versus tiempos subjetivos?”; Duarte, Console, and Gargiulo, “El rol del psicólogo asistencial en el ámbito judicial”; Duarte and Console, “El rol del psicólogo en oficinas interdisciplinarias en casos de violencia doméstica”; Cevalco, *Derecho procesal penal de la Ciudad Autónoma de Buenos Aires*; General Secretariat Organization of American States, “Access to Justice for Women Victims of Violence in the Americas”; Knaut and Ramírez, “Family Violence and Child Abuse in Latin America and the Caribbean”; Anderberg and Rainer, “Domestic Abuse”; Buvinic, Morrison, and Shifter, “Violence in Latin America and the Caribbean: A Framework for Action.”; Vargas, “Gender-Based Violence: Clues for Analysis”; Volpe, “Effects of Domestic Violence on Children and Adolescents: An Overview”; Graham and Chaparro, *Inseguridad, salud y bienestar. Una exploración inicial basada en encuestas sobre la felicidad en América Latina y el Caribe*; Poder Ejecutivo de la Nación, *Decreto Reglamentario 235/1996*; Nussbaum, *Women and Human Development*; Anderberg and Rainer, “Domestic Abuse”; Hodges, Benöhr, and Creutzfeldt-Banda, “The Hidden World of Consumer ADR: The Need to Reassess Pathways of Dispute Resolution, and the Roles of Ombudsmen and Courts”; Coumarelos, “Insights about Access to Justice from a New Survey of Legal Needs: The Legal Australia-Wide Survey”; Hodges, Benöhr, and Creutzfeldt-Banda, “The Hidden World of Consumer ADR: The Need to Reassess Pathways of Dispute Resolution, and the Roles of Ombudsmen and Courts”; Barlow, Hunter, and Smithson, “Mapping Paths to Family Justice - Some Preliminary Findings.”

- |   |                          |             |
|---|--------------------------|-------------|
| a. Friends                                | <input type="checkbox"/> |             |
| b. Family                                 | <input type="checkbox"/> |             |
| c. Acquaintances                          | <input type="checkbox"/> |             |
| d. Police                                 | <input type="checkbox"/> |             |
| e. Court                                  | <input type="checkbox"/> |             |
| f. Advertisements in newspapers, TV, etc. | <input type="checkbox"/> |             |
| g. Others                                 | <input type="checkbox"/> | Which ones? |
- \_\_\_\_\_

2) Is this the first time you have come to OFAVyT (Office to Assist Victims)?

- a. Yes ☐
- b. No ☐ If it is not the first time, when was the first time?
- \_\_\_\_\_

3) What is the problem you are facing?

\_\_\_\_\_

4) Do you currently have another problem that worries you, apart from the one you mentioned before (when answering Question 4)?

- a. No ☐
- b. Yes ☐

i. Which one?

- |                         |                                      |
|-------------------------|--------------------------------------|
| 1. Health               | <input type="checkbox"/>             |
| 2. Addictions           | <input type="checkbox"/>             |
| 3. Fitness              | <input type="checkbox"/>             |
| 4. Psychological        | <input type="checkbox"/>             |
| 5. General well-being   | <input type="checkbox"/>             |
| 6. Employment           | <input type="checkbox"/>             |
| 7. Migration            | <input type="checkbox"/>             |
| 8. Family and relations | <input type="checkbox"/>             |
| 9. Housing              | <input type="checkbox"/>             |
| 10. Discrimination      | <input type="checkbox"/>             |
| 11. Debts               | <input type="checkbox"/>             |
| 12. Others              | <input type="checkbox"/> Which ones? |

ii. Are you currently receiving any help for this problem? From whom? \_\_\_\_\_

5) How probable do you think it is that you will find a solution to the problem for which you came to OFAVyT?

- a. Not probable at all ☐
- b. Not probable ☐
- c. I do not know ☐

- d. Probable ☐
- e. Very probable ☐

7) Which of the following solutions are you seeking to resolve your conflict?

- ☐ An apology from the other party
- ☐ To have formal records of what happened
- ☐ The chance to talk with the other party
- ☐ That the other party receives a sentence by the court
- ☐ To have the other party understand how I feel
- ☐ To separate / divorce from the other party
- ☐ That the other party does not bother me any longer
- ☐ Others (please, specify) \_\_\_\_\_

8) In relation to your problem, to what extent do you trust you can achieve the following tasks?

Classify from 0 to 10 each of the following actions shown in the table below, 0 being "I definitely cannot do that" and 10 "I definitely can do that."

Tasks	Trust
a. Obtain information on my rights and the law	
b. Obtain pictures and other evidence to attach to the complaint	
c. Talk to the other party about the problem	
d. Obtain help to solve the problem I have with the other party	
e. Find someone who can help me to make a decision (e.g. psychologist, neighbour, priest, etc.)	
f. Find a safe place to stay until I feel safe from the other party	
g. Continue with the judicial case against the other party	
h. Obtain a lawyer who can help me in the case against the other party	
i. Find a psychologist who can help me to get through the process	

II) Second Part

1) How old are you?

2) Where were you born?

3) What is your level of education?

- a. Primary school incomplete ☐
- b. Primary school complete ☐
- c. Secondary school incomplete ☐
- d. Secondary school complete ☐

- e. Tertiary school incomplete ☐
- f. Tertiary school complete ☐
- g. University incomplete ☐
- h. University complete ☐
- 4) How many kids do you have?
- a. Number of kids below 18 years old: \_\_\_\_\_
- b. Number of kids above 18 years old: \_\_\_\_\_
- 5) Do you work?
- a. No ☐
- b. Yes ☐
- i. What is your work?
- 
- ii. What is your monthly income?
1. Below \$1,500 ☐
2. Between \$1,500-\$3,000 ☐
3. Between \$3,000-\$4,500 ☐
4. Between \$4,500-\$6,000 ☐
5. Above \$6,000 ☐
- 6) Do you receive any social welfare plan?
- a. No ☐
- b. Yes ☐
- i. Which one(s)? \_\_\_\_\_
- 7) In which neighbourhood do you live?
- 
- 8) Do you own the property where you live?
- a. No ☐ Who is the owner of the property? \_\_\_\_\_
- b. Yes ☐
- 9) What is the total number of people who live in your house?
- 
- 10) How many rooms do you have in your house without including kitchen and bathroom? (include here living room, eating room, sleeping room, etc.)
- 
- 11) What is the income of the household? (that is to say, the total income of the family group that lives with you)
- a. Below \$3,000 ☐
- b. Between \$3,000-\$5,000 ☐
- c. Between \$5,000-\$7,000 ☐
- d. Above \$7,000 ☐

**Thank you very much for answering these questions.**

## Annex 8. Interview Guide for First Interview with Victims<sup>9</sup>

Responsive interviewing techniques were used during the first interviews.<sup>10</sup> The questions below are therefore only a way in which to provide readers with a sense of the type of questions that were asked by the Researcher. The vocabulary used in each interview was adapted to the level of understanding of the Victim. However, not all questions were asked in every first interview and other questions were asked depending on the answers provided by interviewees. Victims were first informed again on the purpose of the study and asked for their consent to participate. In addition, they were asked for their consent to have the conversation recorded.

### Main questions

- 1) Could you please tell me how you first learned of this office [OFAVyT]?
  - a. And, how did you get there (police, OVD, UOD, 0800)?
  - b. Which elements motivated you at the moment you decided to approach them (police, OVD, UOD, 0800)?
- 2) What information did you receive from them (police, OVD, UOD, 0800)?
  - a. Probe: how was this information delivered? By whom? When?
  - b. Prompt: From the information that you received from them (police, OVD, UOD, 0800), what things did you already know, and what things surprised you? What did they tell you? What did you understand from the information you received?
- 3) Could you tell me what changes you have noticed in yourself since you approached them (police, OVD, UOD, 0800)?
  - a. Prompt: Who had an influence in those changes? Who do these changes affect directly? How have your daily activities changed since you approached them (police, OVD, UOD, 0800)?
- 4) Do you think that the information you received [at OFAVyT] can help you resolve your situation?
  - a. Probe: Could you give me an example? How did you come up with this idea?
- 5) Who do you think is responsible for the solution of your problem?
  - a. Prompt: What do you think you can do?
- 6) How are you going to continue from now onwards?
  - a. Prompt: What is your plan? Which impediments can you foresee will need to be overcome in order to achieve this plan? Has your plan changed since you received the assistance [at OFAVyT]? What are you planning to do with the assistance you have just received [at OFAVyT]? How do you think you will do it?

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<sup>9</sup> The original Spanish interview guide was translated into English by the Researcher.

<sup>10</sup> Rubin and Rubin, *Qualitative Interviewing*.

## Annex 9. Interview Guide for Second Interview with Victims<sup>11</sup>

The questions below aim to provide readers with a sense of the type of questions that were asked during the second interviews. Questions were adapted depending on where the complaints were at the time of the second interviews and on the information collected during the first interviews. The vocabulary used in each interview was also adapted to the level of understanding of Victims.

### Section A. General

- 1) Could you tell me about yourself for the last six months?
- 2) The last time we spoke you told me that your main problem was [*refer to the problem they mentioned in the questionnaire completed six months ago*]. As of today, could you solve that problem?
  - Prompt: Can you tell me the main reasons why you could/could not solve the problem? What contributed to that? Which places (organizations) did you visit? Did you go back to any of the places you visited at the time of the first interview (police, OVD, UOD, 0800)? Who recommended that you go there? What kind of information did you receive there? Did you speak with a lawyer during these months? Why?
- 3) The last time we spoke your case was at [*refer to the legal step that was taking place six months ago*]; what happened with the case during these months?
  - Prompt: Can you please tell me what you did in relation to the case during these months? Which factors pushed you to do that?
- 4) Did you make any important decisions during the last six months?
  - Probe: For yourself? Within your family? Within your job? Within your personal relations?
- 5) Can you tell me what the other party did during these months?
  - Prompt: How did the other party react to the civil and/or criminal complaint? How would you describe the other party's behaviour?

Section B. Go to Questions B1, B2, B3, B4, or B5 depending on the stage of the complaint

The questions below vary depending on where complaints were at the time of the second interviews. The options are: B.1. Mediation: parties met to mediate. B.2. Filed away: case filed away due to lack of evidence or the case was referred to federal justice. B.3. Filed-Solved: case filed away due to conflict resolved. B.4. Open: case open and active. B.5. Trial: parties met in trial.

### B.1. Mediation

- 1) Can you please describe for me the mediation?

---

<sup>11</sup> The original Spanish interview guide was translated into English by the Researcher.



- a. Prompt 1: Who participated? Location and Time? How did you feel during the mediation? Did you feel that you could express yourself freely? Did you feel that you could communicate with the other party? What contributed to the good communication? Could you understand easily what the mediator was doing? And what the mediator was saying?
  - b. Prompt 2: If mediation closed with an agreement: Do you feel comfortable with the agreement you signed? To what extent do you think the agreement solved the problem? Could you understand the content of the agreement? Which parts of the mediation did you find more difficult to understand? Which part of the agreement did you find more difficult to understand?
- 2) Do you think that the other party was cooperative during the mediation?
  - 3) To what extent did you and the other party comply with the agreement signed after the mediation?

## B.2. Filed Away

- 1) To what extent did you find it difficult to procure evidence?
  - Probe: Why? What did you do in this regard? Who told you what to do?
- 2) Which factors contributed to the decision to stop participating in the case?
  - Prompt: Did you look for help somewhere else?
- 3) How did you feel while the case was ongoing?
- 4) Which elements did you have in consideration when giving up the case?
- 5) To what extent did you find it difficult to comply with the requests from the prosecutor?

## B.3. Filed Away-Solved

- 1) Are you satisfied with the solution?
- 2) Could you tell me which factors helped you to achieve this solution?
- 3) What was your role in achieving this solution?
- 4) What obstacles did you find that needed to be overcome in order to achieve this solution?
  - Probe: What did you do to overcome those obstacles?

## B.4. Open

- 1) Could you explain to me which factors helped you (or are helping you) to continue with the case?
- 2) Could you describe what you could solve up to now?
  - Prompt: What is pending? What remedies did you find during this time to solve your problem? What obstacles did you encounter along the way?
- 3) To what extent do you think that what was done by the PPO is what was needed?

## B.5. Trial

- 1) Can you tell me about your experience at the court?
- 2) Did you understand at every moment what was going on?

- 3) Could you understand the vocabulary used by the judge and secretary during the trial?

#### Section C. Final

- 1) Can you tell me to what extent you were aware or informed of what was going on in the case?
- 2) Did you receive during this time a specific referral and/or type of assistance that was of help?
- 3) Did you read the brochures provided by the PPO?
  - Prompt: To what extent do you think they were helpful? Did you understand the vocabulary used?
- 4) During the meeting you had with the PPO, how did you find it to understand what people were telling you?
- 5) How was it to follow the different steps you were asked to comply with in the case?
  - Prompt: Could you understand what you were told? Did you have anyone at your side?
- 6) How did you find attending appointments at the PPO? (considering location, and time of meeting)
- 7) What do you think about your rights?
- 8) Did you start/stop any new activity in the last six months?
- 9) To what extent do you feel you are in control of your life today?
- 10) To what extent do you think it was helpful to assist all the organizations?
- 11) If you encounter a similar situation in the future, where will you seek help?
- 12) There is a popular saying that goes, “In order to act, you have to believe.” If you agree with that, can you tell me in what you believed?

#### Section D. Closing Questionnaire

I would like to ask you some short questions that will require you to answer “yes” or “no.” The questions below were also asked if Victims agreed over the telephone to schedule a face-to-face meeting in order to confirm the main information.

- 1) Regarding your transition through the organizations:
  - a. Did you find them costly? (Considering transportation costs, and working hours that you might have lost)
    - i. Yes – No
  - b. Could you do it within a reasonable time?
    - i. Yes – No
  - c. Could you understand what was going on in the case at every moment?
    - i. Yes – No
  - d. Did you find it difficult to attend the different appointments set by the organizations? (Consider schedule, and location)
    - i. Yes – No

- e. Did you find the assistance given in the organizations effective?
  - i. Yes – No
- f. Did you feel you were listened to in the places you attended?
  - i. Yes – No
- g. Did you get to know your rights in this case?
  - i. Yes – No
- h. Did you receive sufficient information about the case at all times?
  - i. Yes – No
- 2) To what extent do you think that what has happened so far in the case depended solely on you?
  - a. To a large extent ☐
  - b. To some extent ☐
  - c. Do not know ☐
  - d. To a small extent ☐
  - e. Not at all ☐
- 3) Which of the following places did you visit due to this case?
 

a. Doctors <input type="checkbox"/>	i. OVD <input type="checkbox"/>
b. Lawyers <input type="checkbox"/>	j. Police <input type="checkbox"/>
c. Friends <input type="checkbox"/>	k. Prosecutor <input type="checkbox"/>
d. Psychologist <input type="checkbox"/>	l. OFAVyT <input type="checkbox"/>
e. Family <input type="checkbox"/>	m. 137 <input type="checkbox"/>
f. Church <input type="checkbox"/>	n. CIM (Comprehensive Centres for Women) <input type="checkbox"/>
g. Judge <input type="checkbox"/>	o. Others <input type="checkbox"/>
h. ONG <input type="checkbox"/>	
- 4) Was this your first experience with this organization and the judicial system?
  - a. Yes – No
- 5) Since you submitted the civil and/or criminal complaint, have any of the following things happened?
  - a. Changes in your job
    - i. Yes – No
      1. Started a new job / became unemployed
  - b. Changes in your consumption level of daily goods
    - i. Yes – No
      1. Consume less / consume more / consume the same
  - c. Changes in your level of stress
    - i. Yes – No
      1. More stress / less stress / the same
  - d. Changes in your health
    - i. Yes – No

- e. Changes in the time you spend on yourself:
    - i. Yes – No
      - 1. To what extent do you think this is related to this case?
  - f. Changes in your social life
    - i. Yes – No
      - 1. To what extent do you think this is related to this case?
- 6) I will give you the beginning of a sentence and I would like you to complete it with the first thing that comes to your mind:
- a. What I wish is \_\_\_\_\_
  - b. What I have is \_\_\_\_\_
  - c. What I fear is \_\_\_\_\_
  - d. What I am able to do is \_\_\_\_\_

**Thank you for participating in the two interviews. If you would like to receive a synopsis of the results of this study, please provide me with your contact information, and I will be happy to send it to you.**

## Annex 10. Effects of Criminal Complaints on the Accused<sup>12</sup>

Category 1 Victims are unsure whether accused received notice of complaints, and lost contact with accused		
Victim	First Interview	Second Interview
V001	Victim believes harassment stopped independently of the complaint.	Victim has no further contact with the accused.
V009	Victim knows the accused lives four blocks from her house.	[Impossible to contact Victim for second interview] <sup>13</sup>
V030	Accused left the country.	[Victim declines second interview, in her words: <i>sorry I do not want to go over it again</i> ] <sup>14</sup>
V041	Victim moved to parents' house outside of the City. Right after submitting complaint the Victim received telephone threats and accused requested mediation. Victim declined mediation and messages stopped and accused never appeared again. Victim was pregnant with the accused's child at the time of complaint.	Victim has no further contact with the accused. Accused did not recognize the child nor comply with paternal obligations. Victim prefers this rather than being in contact with the accused.
V047	Accused left the house and never returned. Police officer left telephone numbers but these were never used.	Victim has no further contact with the accused.
V023	Victim believes that the accused (her brother) did not contact her again due to the complaint.	Victim has no further contact with the accused, though she knows the accused is visiting the hospital due to potential cancer.
V025	Relation stopped.	[Impossible to contact Victim for second interview] <sup>15</sup>
V044	Victim believes that the intervention of a police officer might improve the situation because the accused is a <i>little bit</i> afraid of the police.	Victim has no further contact with the accused, and Victim believes it is thanks to the complaint and the support of neighbours.

<sup>12</sup> V005, V007, V029, V036, and V046 are not included in this list because no information was obtained about the effect of the complaint on the accused during the first (and second) interview.

<sup>13</sup> Five attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately.

<sup>14</sup> After second attempt, Victim answers and agrees on a telephone interview but later in the evening. When called in the evening the Victim asked if she could be called another day, and then said that actually she did not want to go over the issue again, that she was preparing dinner and watching a movie with her child.

<sup>15</sup> Five attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately. An e-mail was sent and no response either.

Category 2 Victims are unsure whether the accused ever received the complaints, yet the contact persisted		
Victim	First Interview	Second Interview
V021	Contact persists on Facebook, and Victim refers to complaint on that platform. Accused did not react, but Victim experienced this temporary behaviour before.	Accused is aware of complaint and started to treat her well. Accused told Victim not to be a fool since he would never hurt her. Accused informed Victim that he is expecting a child with his new partner.
V022	Contact persists in relation to children (through Victim's mother in re visitations and bank deposits), and this was already agreed in civil mediation four months before complaint. In previous experiences complaints were effective in stopping abuses for less than three months (the period of the restraining order) because the child continued visiting the accused and the Victim's mother could not always bring the children and hence the Victim ended up meeting with the accused.	[Victim avoids second interview] <sup>16</sup>
V028	Contact persists in relation to children. Victim wants to consult lawyer before deciding notification.	Visitation and child support problems persist, and are being taken care of by a lawyer.
V040	Contact persists in relation to children. Victim called police to know if accused was notified and they did not know.	[Victim avoids second interview] <sup>17</sup>
V050	Accused continues to appear in the house and work of the Victim. Housekeeper told the accused not to return because the Victim was afraid of him. The Victim explains that when they started dating the accused received a complaint from his previous partner. She perceived he was very afraid, yet this time she did not perceive any change in the accused.	Accused continues appearing at her house and work. Victim perceives no effect on the accused even when she was told by the PPO that the accused was given a restraining order and probation to start a course for violent men.

<sup>16</sup> Second attempt, Victim responds and asks to be called later because she had people working on the renovation of the house. Called back and Victim stated being on vacation and asked if she could be called back. Called back when agreed, and Victim said that she could not talk because her house was under renovation. No further call-back.

<sup>17</sup> First attempt, Victim was on the street and connection was bad. Second attempt, voicemail. Third attempt, Victim was in school (she is a teacher) and asked if she could be called after 5pm. Called after 5pm and asked if I could send the questions via e-mail. Victim was asked whether she wanted to receive the questions or preferred to leave it there. She said she will respond to the e-mail. E-mail sent twice but no response.

V011	Contact persists in relation to children though they do not see each other. After submission of complaint accused stopped approaching her (first time that the accused had this behaviour). Accused picks up the children when she is not at home. Couple has been separated for approx. six years. Victim thinks that change in behaviour is due to complaint, but she went to the civil court to pick up the restraining order, but returned without it because she was tired of waiting. In the words of the Victim: <i>I believe that if he sees that there is someone behind me, someone who is supporting me, he will, he will start to order [his behaviour]. All this time he did not do it because I did not do it either.</i>	Abuse stopped and couple agreed on terms of visitation in criminal mediation.
V020	Contact persists through their sister. Victim does not perceive any change because she moved in with sister after complaint (accused is brother with drug addiction and they lived together).	[Impossible to contact Victim for second interview] <sup>18</sup>
Category 3		
Victims are aware of the fact that the accused were notified about complaints, yet perceive no changes in the behaviour of the accused		
Victim	First Interview	Second Interview
V043	After complaint the parties returned to live together and then separated. Victim does not perceive that complaint had any consequence on the accused. Accused was never summoned though he knew of the complaint. Victim noticed change only after separation.	Accused changed and now they can communicate well. Victim thinks it is due to complaint, separation, and the risk of going to jail. After two-month separation they returned to live together and are building a house.
V048	After complaint the Victim and accused stopped calling each other. Victim said she will not reply to his messages if he calls her back. Based on previous events and on what she heard on TV and seminars, Victim does not believe that the complaint had any effect on the accused. She believes that only a monetary penalty would make him reflect, because money is something he cares for. Accused repetitively told Victim that he is afraid of nothing. Victim called	[Victim avoids second interview] <sup>19</sup>

<sup>18</sup> Five attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately.

<sup>19</sup> First attempt, Victim replies and said she was on vacations and asked to be called later. Called later and Victim asked to be called in the evening. Called in the evening and someone picks up the telephone and hangs up immediately. Sent an e-mail and never received an answer.

	line 911 because he was about to kill her. In a previous complaint a police officer took Victim after a third party called police when witnessing a physical abuse inside the car.	
Category 4 Victims are focused on different problems after the complaints were submitted		
Victim	First Interview	Second Interview
V054	Accused abandoned the household. Accused (i) apologised and promised not to hit her again, (ii) stopped going out as often, (iii) looks preoccupied and asked Victim, "What are they going to do to me?" and (iv) left the household due to work obligations and calls only to communicate with children. The Victim regrets submitting the complaint and asks herself, "Why did I submit the complaint?"	Accused still works outside of the City and did not return. Accused still communicates only with children and sends money through a family member.
V026	Accused stopped hitting the Victim but the abuse continues (verbal and through the accused's mother). Couple was already separated but shares household due to the schooling of their children.	Four months after complaint the Victim left household, divorced, and moved out of the City with her new partner. Child support and visitations settled and there is no further abuse.
V042	The accused respected the restraining order but infringed the property of the Victim.	[Victim avoids second interview] <sup>20</sup>
V018	After the complaint the accused continued having drinking problems and Victim (divorced) continued working on visitation agreement because she does not want the children to be with an alcoholic.	[Impossible to contact Victim for second interview] <sup>21</sup>
V051	Victim believes the accused is not abusive any more but still escalates in his aggression when jealous and loses control of himself.	The couple lives together and even when less severe, the violence continues. Victim believes that the accused tries to avoid another complaint because he fears the police.
V053	Accused contacts Victim, though using other names on Facebook and e-mail accounts. Accused is not abusive and invites her to go out.	After mediation the accused stopped contacting the Victim. Victim believes that he understood that further abuses will ultimately be bad for him.

<sup>20</sup> First three attempts voicemail. Forth attempt Victim was in a taxi and asked to be called later. Two further attempts and voicemail. Seventh attempt Victim replied and asked to have the interview sent via e-mail. E-mail sent twice but no response.

<sup>21</sup> Victim left e-mail for second interview. Sent e-mail but no response.



V016	<p>Firstly, accused used to tell Victim: “Nobody will do anything to me.” After first complaint (7 years before the current), the accused was sent to the police station, and incarcerated for 8 hours. When back, he did not hit her again but continued drinking. Since then no physical abuse but yes psychological abuse. Accused continues drinking and the Victim asked him to leave the house because the children could not be exposed to his being drunk. Parties agreed that he would live with his sister, although they still work together in a sweatshop they jointly own on the first floor of their house. The accused was asked by the PPO to attend the programme for violent men at the hospital and Victim says he was active in complying with the request. Accused expressed he wants to change.</p>	[Impossible to contact Victim for second interview] <sup>22</sup>
<b>Category 5</b>		
<b>Victims are sure that the accused stopped the abusive behaviour after the submission of the complaints, though they doubt of the sustainability</b>		
<b>Victim</b>	<b>First Interview</b>	<b>Second Interview</b>
V010	<p>The accused changed from the moment he saw the police officer at the house, and since then he does not meet with friends to drink. Victim did not experience violence for one month after complaint, but doubts he genuinely repents.</p>	[Impossible to contact Victim for second interview] <sup>23</sup>
V045	<p>Accused changed and after the complaint things improved, but Victim explains it is always the case that after a complaint or a “click” a moment of tranquillity comes. After three complaints, the Victim explains that she cannot associate the complaint to a change, because after all three he threatened her again. Couple is separated and have children in common. Victim started psychological treatment.</p>	Nothing happened during these six months, but Victim does not believe this will be constant because it has always been a cycle. The accused did not start psychological therapy and until then she cannot believe in a possible change.
V052	<p>At first the accused was behaving “excellent.” Accused went “mad” again after Victim asked him to feed the child with better food, and he started shouting and hitting the father of the Victim.</p>	Accused threatened Victim again outside of her school, and there was another restraining order. Afterwards he did not approach her any more. She saw him on the street and he did not even come close to see the child. She

<sup>22</sup> Five attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately.

<sup>23</sup> Six attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately.

		believes this is due to a second restraining order that prohibits him from coming close to her and the child.
V031	[No first interview, only notes from interview with OFAVyT and questionnaire]	Victim perceives a change at the beginning, and the accused tries to comply because he fears a legal penalty, yet then he is the same. She believes he needs counselling because he does not absorb what he is told (a judge told him about his parental obligations, her new partner told him not to bother her any more); his behaviour does not change. Accused changed a lot and reduced the drinking though she is unsure about how long it will last. Victim thinks that this change is because she left for one week and told him that she was considering leaving for good.
V027	Victim perceives the accused is drinking less. Also, the Victim perceives that a colleague influences the behaviour of the accused since the colleague tells him the activities he does with his children and tells him to be like him. Victim doubts sustainability because after previous complaints he calmed down at the beginning and then returned to the same behaviour.	
V002	Victim perceives that the accused is afraid of the police and she threatens him with the fact that if he continues bothering her, he will go to jail.	[Impossible to contact Victim for second interview] <sup>24</sup>
Category 6		
Victims are promised by the accused—after the submission of complaints—that they will attend psychological therapy or a rehabilitation programme		
Victim	First Interview	Second Interview
V013	Accused promised to go to a psychologist and to change (there is another complaint from two years before). Mediation agreement: accused compromised to a respectful communication and to a treatment at Alcoholics Anonymous.	[Victim avoids second interview] <sup>25</sup>
V014	No further abuse and accused compromised to start a rehabilitation programme.	Right after complaint the accused was upset and asked her, “How many more complaints are you going to make?” But the aggression ceased, and she did

<sup>24</sup> Six attempts to contact Victim at different dates and times. In all attempts the voicemail responded immediately.

<sup>25</sup> Victim left two numbers for call-back: work number and cell-phone number. First attempt, voicemail in cell-phone and boss answered at work number. Boss said that Victim was not working anymore because her partner did not want her to work, and she did not contact her anymore because she did not know what went on inside the house. Called back and Victim said that everything was going well, that the accused got sick with the prison, and that he could not drink any more. A request for a second interview was made, and Victim proposed a day and time. Victim was called before to confirm appointment, and she desisted, asking if she could be called later. The Victim was called at the time agreed and she asked to be called later. Called later and: voicemail.

		not feel the need to extend the restraining order. Victim noticed a significant change after they signed the mediation agreement at the PPO. Victim submitted a previous complaint ten years before this one, but she could not follow up with it due to work obligations.
Category 7 Victims perceive that after the complaints the abuses stopped		
Victim	First Interview	Second Interview
V037	Accused changed drastically after the complaint (even if he had not received the notification yet) and they still live together. <sup>26</sup> He did not bother her any longer and he is more tranquil.	Accused started counselling out of his own decision, and the couple went back to live together.
V012	No more abuse, the couple talked and agreed on living together for the benefit of the children. Victim continues counselling (CIM).	Accused got angry and said he was tired of all those lies, and Victim believes he then started a psychological therapy requested by the PPO because she saw a paper with an appointment. Accused tells Victim that the psychologist says he needs to learn how to lie. The Victim thinks that after the last complaint he changed <i>a little bit</i> though when he gets angry he asks her “Why did you submit a complaint?” Accused now spends a lot of time with his friends instead of staying with the Victim and the children. Legal documents indicate that accused was called to attend counselling due to cocaine addiction. Victim submitted a second complaint, and accused states that he would leave the country and go to Bolivia.
V035	[No first interview and questionnaire]	Victim experiences no further problems. The couple does not live together and agreed on visitation without having to see each other. Accused was aware of the restraining order, and <i>luckily those things scare him, when there is a complaint in the middle, at least [he] respects</i> .
V034	Victim noticed a <i>100% change</i> after the accused received the restraining order. Victim called it the <i>effect order</i> and said: <i>When the effect order was in place it was marvellous. He gave more money than the amount required</i> and said he would behave and comply with the order. In the long term the main difference is that the accused recognizes that he needs assistance.	Victim experiences no further problems, and couple stays in touch due to child.

<sup>26</sup> V-IwSP, 037.

V008	Accused stopped contacting Victim. Immediately after complaint the Victim sent him messages threatening to submit a complaint if he continued, and he eventually stopped.	[Victim avoids second interview] <sup>27</sup>
V003	Victim perceived a change in attitude from the accused after the current (second) complaint, as if he were feeling guilty. <sup>28</sup>	Accused was supposedly called to mediation, and because he did not attend, the police summoned him at work. After the complaint he was initially angry and called the Victim and grandmother asking them to dismiss the complaint (for approximately a month), but when he saw that the Victim was keeping the complaint, he did not ask again, and started to comply with the judicial requires. He currently complies with child support, and does not fight any more. Victim thinks that the complaint has had a positive effect. She also thinks that he is afraid.
V039	[No first interview, only notes from interview with OFAVyT and questionnaire]	Victim believes that the accused is more tranquil due to the complaint and due to his new girlfriend.
<b>Category 8</b>		
<b>Victims perceive negative changes in the accused after the complaints were submitted</b>		
<b>Victim</b>	<b>First Interview</b>	<b>Second Interview</b>
V004	Accused gets angry every time he receives a letter from the judicial system to attend mediation or a hearing. Accused called Victim and said: <i>Son of a bitch, what did I do to you? What did I do for you to do this to me?</i>	[Victim avoids second interview] <sup>29</sup>
V006	Accused gets “crazier” than before and asks her to take her belongings from his house.	Victim lost complete contact with accused after complaint. She believes that it was good that someone informed him that he was wrong and placed him in the right place.

<sup>27</sup> Contacted Victim and she explain living with the accused outside of the City and working in the City. An interview was requested at her work place, and she agreed. Victim was called to set up a time and did not answer the call. Victim was called during working shift and she explained she was occupied and asked to be called in two weeks. She was call after two weeks and expressed being on vacations and asked to be called later. No further attempts were made, and an e-mail was sent.

<sup>28</sup> V-I 1, 003 the Victim explains that after the second complaint, the accused came to pick up the child, and showed more attention to the child.

<sup>29</sup> First attempt, Victim replies to e-mail and agreed on a time to meet. Victim never shows up. Seven attempts were made at different times and dates to reach her on the telephone, and no reply. An e-mail was sent with an online interview, and never replied to.

V015	Accused gets angry after knowing of the complaint and asks the Victim <i>How many times are you going to submit a complaint against me?</i>	Victim did not receive threats again and is still in contact with the accused in relation to the children. He currently complies with child support and visitations, but continues drinking.
<b>Category 9</b>		
<b>Victims perceive that the accused know of the complaints, yet the accused do not feel threatened</b>		
<b>Victim</b>	<b>First Interview</b>	<b>Second Interview</b>
V032	Accused told Victim that he will not feel threatened by her or any other lawyer. Victim explains that her experience as a lawyer tells her that the accused might only change if they experience the enforcement of measures (e.g. restraining orders or hearings).	[Victim avoids second interview] <sup>30</sup>
V033	Accused stopped bothering her but left a message saying that he does not care about the complaints and that he will submit one against her after self-injuring himself. This event occurred when parties met to discuss community property.	Victim received no more threats after complaint, but she is dealing with a crisis her child is suffering due to his schizophrenia condition. Victim explains that after the event that motivated the complaint, it took three months for the child to recover, and three months later the child experienced severe crises again. She believes that the intervention of the judicial system is like a <i>red light</i> , is not that <i>I do whatever I want and nobody tells me anything ... I believe he will be more careful because he has a record.</i>
V049	Accused believes that he has impunity. After restraining order the accused left the house but threatened to start taking property that the Victim cares for, such as the dogs.	[Victim avoids second interview] <sup>31</sup>
V019	The accused is not afraid by the complaint because he knows that most of the cases end in nothing, he tells her, "Go ahead, go to court."	Accused was notified of complaint and called to testify within a month. Victim does not notice any change in the accused, she said she submitted a complaint as her last resource, though he told her before, "Go to court, since nothing ever happens afterwards." She believes the case did not move fast enough.

<sup>30</sup> First call: Victim replies and explains that she is in the hospital with her mother who is sick, and second call was arranged. Second call: Victim explains her mother is still not doing well, that she will call later or if not to call her in two weeks. Another attempt made after two weeks and no answer. An e-mail was sent with some questions, and no answer received.

<sup>31</sup> First attempt, Victim replies and explains that she might go to the mediation and if so we could meet afterwards. Victim does not appear at mediation. Called back and Victim says that she could not do the interview at that moment but that she wanted to do it. Victim asked if an e-mail could be sent so she could reply with option. An e-mail was sent, but no reply. One week before finishing fieldwork stay, another e-mail was sent asking if she would like to meet, but no response.

Category 10 Victims perceive no changes in the behaviour of the accused after the submission of complaints		
Victim	First Interview	Second Interview
V024	Accused knows of the complaint though was never called by the PPO. Victim explained having five previous complaints but none had an effect on the accused. Victim believes that this is because he never received a notification, and this time with the mediation scheduled, she believes it will have an effect on him.	Victim was surprised that he reacted well to the complaint, since she incorrectly thought he would start shouting. Victim is content with the mediation agreement. She says it was a joint effort to agree on mediation and to stop the aggression.
V038	Victim does not perceive any specific change and believes the accused might know because most probably the child told her. (Complaint made against niece.)	Victim does not believe the complaint had any concrete effect on the accused; however, the accused was sent to a rehabilitation centre by the Public Defender of the Minors and Disabled.
V017	Accused stopped shouting at her after the complaint, but now he passed by the yard and smiled in a challenging way. He does not enter the house due to the restraining order.	[Victim avoids second interview] <sup>32</sup>

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<sup>32</sup> First attempt, Victim replies and the communication was very bad, and the communication went off a couple of times. Second attempt, the sister picks up and says that she was not in the house. Third attempt, a man replied and said that the Victim was out of the house. Called two more times at different times and dates, but the voicemail answered. No message left.

### Annex 11. Measures and Problems in the Eyes of Victims and in the Eyes of the PPO

Victim	Date & Place of Complaint <sup>33</sup>	First Interview <sup>34</sup>	Measures <sup>35</sup>	Subsequent Complaints & Second Interview	Is the Problem Solved in the Eyes of Victims? <sup>36</sup>
V001	27.12.12 PPO	03.07.13	1) Temporarily moved to another neighbourhood. 2) Temporarily left work due to distance.	18.02.14	Victim addresses no further contact during the last year with the accused, however she does not know if the problem is solved because it occurred in the past that the accused disappeared for five years and then re-appeared.  Criminal complaint <b>filed away</b> due to lack of evidence (Date unknown).
V002	03.06.13 OVD	05.07.13	1) Restraining order (Civil Court). 2) Victim moved outside of the City.	No second interview	Victim considers the problem <b>solved</b> .  Criminal complaint <b>filed away</b> due to lack of evidence (15.07.13).
V003	05.07.13 PPO	08.07.13	1) Restraining order (Civil Court). 2) Civil mediation for child support & compliance (with lawyer). 3) Criminal mediation pending.	07.02.14	Victim considers the problem <b>solved</b> . Child support is being complied with and she received no more threats.  Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b> .

<sup>33</sup> The date marked under this column refers to the first complaint available in the PPO case for the Victim. This does not mean that Victims might not have previous complaints.

<sup>34</sup> All interviews were performed by the author of this study with the exception of those that state "OFAVyT." In those cases, notes were taken by the author of this study from the meetings with OFAVyT, and Victims could not stay for the interview.

<sup>35</sup> Information extracted from interviews and from the review of legal documents. The list is not exclusive and omissions are almost certain.

<sup>36</sup> Information about how Victims consider their problem solved is taken from first and second interviews. Information about the stage of the criminal complaints is extracted from the review of legal documents at the time of second interviews.

V004	12.06.13 Police Station	10.07.13	1) Civil mediation for child support and visitations. 2) Criminal mediation pending. 3) Accused got angry when he learned about criminal complaint.	No second interview	Victim considers the problem <b>partially solved</b> . Victim wants to amend visitation and child support civil agreement.  Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b> .
V005	16.11.12 Police Station 24.06.13 PPO	11.07.13	1) Divorce (Civil Court). 2) Criminal mediation scheduled, yet parties did not attend.	No second interview	Victim considers the problem <b>solved</b> and stated feeling tranquil. Victim does not want to participate in mediation or trial.  Criminal complaint <b>filed away</b> due to lack of evidence (27.09.13).
V006	15.05.13 Police Station	12.07.13	1) Restraining order (PPO). 2) Victim became inactive with judicial requires due to work obligations.	20.01.14	Victim considers the problem <b>partially solved</b> . No further abuse, yet accused owes her 12,000 ARS.  Criminal complaint <b>open</b> and investigation on-going.
V007	12.07.13 PPO	12.07.13	1) Divorce (Civil Court), yet accused not notified due to lack of address. Sentence pending. 2) Restraining order (Civil Court). 3) Civil & criminal mediation for child support.	22.01.14	Victim considers the problem <b>not solved</b> . Temporary solution after criminal mediation (child support).  Criminal complaint <b>re-opened</b> due to <b>breach of mediation</b> agreement.
V008	24.05.13 OVD	12.07.13	1) Restraining order (Civil Court). 2) Criminal mediation suggested but not taking place based on OFAVT's recommendation (type of violence).	No second interview	<b>Unknown</b> if problem is solved. Victim moved back with the accused and they are building a house outside of the City.  Criminal complaint <b>open</b> and prosecutor <b>requests trial</b> .



V009	08.07.13 OVD	15.07.13	1) Victim wants to leave the neighbourhood but cannot due to economic and family impediments (unemployed and nine children).	No second interview	Victim considers the problem <b>solved but doubts sustainability</b> . Victim addresses in first interview that accused was not bothering her but that he lives four blocks away from her house.  Criminal complaint <b>open</b> and prosecutor <b>requests trial</b> .
V010	18.12.12 OVD	15.07.13	1) Restraining order (Civil Court). 2) Criminal mediation agreement: accused complying with treatment for violent men and for alcohol addiction.	No second interview	Victim considers the problem <b>partially solved and doubts sustainability</b> . Abuse stopped for one month after complaint, yet drinking continues.  Criminal complaint <b>filed away</b> with mediation agreement (07.08.13).
V011	25.05.13 OVD 28.05.13 Police Station	16.07.13	1) Criminal mediation being complied with. 2) Victim needs to find a lawyer to increase child support.	28.01.14	Victim considers the problem <b>partially solved</b> . Abuse stopped, yet Victim wants child support to be increased.  Criminal complaint <b>filed away</b> with mediation agreement (29.10.13).
V012	11.09.07 Civil Court 14.07.11 OVD 05.12.12 OVD	17.07.13	1) Probation being enforced, and OFAVyT explains that accused is complying (undertaking treatment for violent men). 2) No criminal mediation. 3) Second complaint for domestic violence.	07.02.14  12.02.14 OVD  18.02.14	Victim considers the problem <b>not solved</b> . First contact: Victim considers the problem solved, however she asked to be called later. Second contact: Victim was at the OVD filing another complaint. Third contact: Victim expressed that <b>problem persists</b> , and accused expresses leaving the country (most probably temporarily).  Criminal complaint <b>re-opened</b> with new events.
V013	08.07.13 OVD	18.07.13	1) Restraining order (Civil Court). 2) Criminal mediation. 3) Accused imprisoned (reason	07.02.14 <i>Contacted Victim, yet no second interview</i>	Victim considers the problem <b>solved</b> . Victim considers that <i>everything is fine</i> . No information was obtained about the problem. Accused got sick in jail and stopped drinking. Legal documents indicate that

V014	01.07.13 OVD	22.07.13	<p>unknown).</p> <p>4) Victim returned to the accused.</p> <p>5) Victim stopped working.</p>	<p>1) Criminal mediation agreement: respectful communication and treatment for alcohol addiction.</p> <p>2) Agreement partially complied with.</p>	10.02.14	<p>accused compromised in mediation to participate in treatment for violent men and for alcohol addiction.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (18.11.13).</p> <p>Victim considers the problem <b>partially solved</b>. Couple lives together. Threats stopped and alcohol consumption was reduced yet not completely solved. Victim feels the complaint focuses more on the threats than on the real problem: alcohol addiction.</p>	<p>Criminal complaint <b>filed away</b> due to lack of evidence (22.10.13).</p> <p>Victim considers the problem <b>solved yet doubts sustainability</b>. Even when the five months of compliance passed the Victim expresses that <i>he is both a tranquil and an abusive person</i>.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (21.10.13).</p>	<p>Victim considers the problem <b>partially solved</b>. Physical abuse is considered solved, yet psychological abuse and alcohol consumption continues.</p> <p>Criminal complaint <b>opened</b> with probation agreement (Date unknown).</p>
V015	18.07.13 OVD	23.07.13	<p>1) Restraining order (Civil Court).</p> <p>2) Criminal mediation agreement: respectful communication.</p> <p>3) Civil mediation agreement: child support (review of amount every three months) and visitation agreement without parties meeting.</p>	<p>1) Incarceration for eight hours.</p> <p>2) Couple agrees on separation, yet working together.</p>	11.02.14	<p>Criminal complaint <b>filed away</b> due to lack of evidence (22.10.13).</p> <p>Victim considers the problem <b>solved yet doubts sustainability</b>. Even when the five months of compliance passed the Victim expresses that <i>he is both a tranquil and an abusive person</i>.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (21.10.13).</p>	<p>accused compromised in mediation to participate in treatment for violent men and for alcohol addiction.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (18.11.13).</p> <p>Victim considers the problem <b>partially solved</b>. Couple lives together. Threats stopped and alcohol consumption was reduced yet not completely solved. Victim feels the complaint focuses more on the threats than on the real problem: alcohol addiction.</p>	<p>Victim considers the problem <b>partially solved</b>. Physical abuse is considered solved, yet psychological abuse and alcohol consumption continues.</p> <p>Criminal complaint <b>opened</b> with probation agreement (Date unknown).</p>
V016	22.02.12 OVD	24.07.13	<p>1) Incarceration for eight hours.</p> <p>2) Couple agrees on separation, yet working together.</p>	<p>1) Incarceration for eight hours.</p> <p>2) Couple agrees on separation, yet working together.</p>	No second interview	<p>accused compromised in mediation to participate in treatment for violent men and for alcohol addiction.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (18.11.13).</p> <p>Victim considers the problem <b>partially solved</b>. Couple lives together. Threats stopped and alcohol consumption was reduced yet not completely solved. Victim feels the complaint focuses more on the threats than on the real problem: alcohol addiction.</p>	<p>accused compromised in mediation to participate in treatment for violent men and for alcohol addiction.</p> <p>Criminal complaint <b>filed away</b> with mediation agreement (18.11.13).</p> <p>Victim considers the problem <b>partially solved</b>. Couple lives together. Threats stopped and alcohol consumption was reduced yet not completely solved. Victim feels the complaint focuses more on the threats than on the real problem: alcohol addiction.</p>	<p>Victim considers the problem <b>partially solved</b>. Physical abuse is considered solved, yet psychological abuse and alcohol consumption continues.</p> <p>Criminal complaint <b>opened</b> with probation agreement (Date unknown).</p>

V017	14.04.13 OVD	26.07.13	<p>1) Restraining order (Civil Court).</p> <p>2) Panic-button (PPO).</p> <p>3) Child support (Civil Court).</p> <p>4) Psychological therapy for Victim.</p> <p>5) Accused complied with restraining order, yet sees her and smiles in challenging way.</p>	13.02.14	<p>Victim considers the problem <b>solved yet doubts sustainability</b>. Couple does not live together, but across the street from each other. She already experienced temporary periods of calmness, and accused threatened her brother five months after submission of complaint requesting that the Victim drop the complaint.</p> <p>Criminal complaint <b>open</b> and prosecutor <b>requests trial</b>.</p>
V018	27.07.12 Police Station	22.08.13	<p>1) No criminal mediation due to characteristics of violence experienced.</p>	No second interview	<p>Victim considers the problem <b>not solved</b>. Alcohol problem persists, and Victim wants to restrict visitations.</p> <p>Criminal complaint <b>open</b> and prosecutor <b>requests trial</b>.</p>
V019	14.12.11 OVD	28.06.13	<p>1) Child support (Civil Court).</p> <p>2) No mediation accepted by Victim, she wants other measures.</p> <p>3) Victim finds a more stable work.</p>	17.02.14	<p>Victim considers the problem <b>not solved</b>. Victim perceives no changes in the accused and believes that the case did not move fast enough. Visitation agreement is not being complied with and threats continue.</p> <p>Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b>.</p>
V020	16.06.13 Police Station	27.06.13	<p>1) No criminal mediation.</p> <p>2) Victim moved out of the house of the accused (brother) with her sister.</p>	No second interview	<p>Victim considers the problem <b>not solved</b>. During first interview Victim states that the accused needs to stop drinking and stop threatening her.</p> <p>Criminal complaint <b>open</b> and prosecutor <b>requests trial</b>.</p>

V021	23.07.13 PPO	30.07.13	1) No mediation offered. 2) After complaint the accused starts another family and is expecting a child.	04.02.14	Victim considers the problem <b>solved</b> . No further threats.  Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b> .
V022	21.07.13 Police Station	30.07.13	1) Two civil mediations on child custody and visitation with no agreement.	27.01.14 <i>Contacted Victim, yet no second interview</i>	Victim considers the problem <b>solved yet doubts sustainability</b> . In previous experiences the accused complied temporarily.  Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b> (parties did not appear at first mediation).
V023	27.05.13 OVD	27.06.13	1) Restraining order (Civil Court). 2) Parties have no contact. 3) Criminal mediation scheduled, yet parties did not attend. 4) Accused (brother) is subject to medical treatment due to cancer.	30.01.14	Victim considers the problem <b>solved yet doubts sustainability</b> . She lost contact but recognizes that the accused is a violent person. She considers that not bothering her during these months does not mean that he will not do it again.  Criminal complaint <b>filed away</b> due to lack of evidence (28.10.13).
V024	12.06.13 Police Station	31.07.13	1) Criminal mediation being complied with.	12.02.14	Victim considers the problem <b>solved</b> .  Criminal complaint <b>filed away</b> with <b>mediation</b> agreement (19.09.13).
V025	02.03.12 OVD	31.07.13	1) Mediation did not take place.	<i>No second interview</i>	Victim considers the problem <b>solved</b> . Victim has no contact with the accused. Accused moved out of the country, and Victim left the country for one month after complaint.  Criminal complaint <b>filed away</b> due to lack of evidence (07.10.13).

V026	13.07.13 Police Station	31.07.13	1) No criminal mediation. 2) Divorce, custody, visitation, and child support four months after first interview (Civil Court).	20.01.14 & 27.01.14	Victim considers the problem <b>solved</b> . No further threats. Victim with children moved outside of the City.  Criminal complaint <b>referred</b> to federal justice system (10.09.13).
V027	27.04.13 OVD	01.08.13	1) Victim perceives a positive change in behaviour: less drinking and higher parental commitment. 2) Victim left the household for one week and returned to the household.	15.10.13 OVD  13.02.14	Victim considers the problem <b>solved yet doubts sustainability</b> . Couple lives together. Victim had a car accident and said to be focused on that problem.  Criminal complaint <b>filed away</b> due to lack of evidence (09.08.13).
V028	05.07.13 Police Station	02.08.13	1) Criminal mediation took place twice with no agreement. 2) Divorce (Civil Court), yet problems still on-going with child support and visitation. 3) Victim starts psychological therapy.	27.01.14	Victim considers the problem <b>not solved</b> . Criminal mediation helped to calm down the situation and to place limits on the accused. Civil case continues and communication amongst parties is still controversial. Victim says that it will take more years before he could consider the problem solved and uses psychological therapy to learn how to handle the conflictive relation.
V029	25.05.13 PPO	23.08.13	1) No criminal mediation. 2) Second complaint at OVD against a new accused (son).	18.02.14	Criminal complaint <b>open</b> and investigation on-going. Victim considers the problem <b>solved</b> . Victim does not answer to questions during the second interview. She only repeats that now her problem is with her son and with her work and debts. Victim does not want to answer to the question about whether the couple was still living together and vaguely says that they see each other but that <i>now it is different</i> .  Criminal complaint <b>open</b> and investigation on-going.



V035	26.07.13 OVD	29.07.13 OFAYT	1) Restraining order (Civil Court). 2) Civil mediation settled child support and custody. 3) No criminal mediation.	17.02.14	Victim considers the problem <b>solved</b> . Accused was afraid of restraining order and complied. Accused sent apologies to Victim. Couple does not live together.  Criminal complaint <b>filed away</b> due to lack of evidence (16.10.13).
V036	22.06.13 Police Station	04.07.13	1) Criminal mediation not scheduled.	No second interview	<b>Unknown</b> if problem is solved. During first interview Victim expresses that the threats were reduced after the complaint and that she is currently with another partner. Accused did not live in the country and visited sporadically due to work obligations.  Criminal complaint <b>open</b> and prosecutor <b>requests trial</b> .
V037	10.06.13 OVD	04.07.13	1) No criminal mediation. 2) Victim went to counselling and was discharged.	31.01.14	Victim considers the problem <b>solved</b> . She sees progress in the share of parental duties (he is with the children in the morning and takes care of the house). Couple separated for six months. Couple returned to live together and no abuse since then.  Criminal complaint <b>open</b> and prosecutor <b>requests trial</b> .
V038	02.08.13 OVD	07.08.13	1) No Criminal mediation. 2) Accused was sent to a rehabilitation centre. 3) Intervention of the Public Defender of the Minors and Disabled.	04.02.14	Victim considers the problem <b>partially solved</b> . The complaint helped to achieve the admission of the accused to the rehabilitation centre. Accused still attends treatment at the time of second interview.  Criminal complaint <b>open</b> and investigation on-going.

V039	08.04.13 OVD	07.08.13	1) Restraining order (Civil Court). 2) Criminal mediation agreement. 3) Victim does not pursue child support.	14.02.14	Victim considers the problem <b>partially solved</b> . Accused does not comply with visitation agreement though she does not care because he is the one who loses the chance to be with his children. Abuse stopped after criminal mediation, but mostly because the accused took distance from Victim and the children.  Criminal complaint <b>filed away</b> with <b>mediation</b> agreement (28.10.13).
V040	11.07.13 OVD	07.08.13	1) Restraining order (Civil Court). 2) Possible civil mediation. 3) No criminal mediation.	14.02.14 <i>Contacted Victim, yet avoids second interview</i>	<b>Unknown</b> if problem is solved. Contact continues in re children.
V041	06.10.12 Police Station	08.08.13	1) No criminal mediation. 2) Victim prefers to file away the case.	04.02.14	Criminal complaint <b>open</b> and investigation on-going. Victim considers the problem <b>solved</b> , though fear persists. Accused never contacted her again. However, they have a child never recognized by the accused. Victim moved with parents outside of the City and was trying to find a place for her and the child. Victim lost contact with the accused and did not claim for parental responsibilities.
V042	24.10.12 Police Station 15.11.12 OVD 22.06.13 OVD	09.08.13	1) Restraining order (Civil Court). 2) Panic-button (PPO). 3) No criminal mediation. 4) Problems with property persist. 5) Victim develops mechanisms of self-protection against her	24.02.14 <i>Contacted Victim, yet avoids second interview</i>	Criminal complaint <b>filed away</b> due to the nature and importance of the facts (25.09.13). Victim considers the problem <b>partially solved</b> . Accused respects restraining order.  Criminal complaint <b>filed away</b> due to lack of evidence (12.2013).



			ex-partner. 6) Victim counts on social support and psychological treatment.			
V043	12.08.12 OVD	12.08.13	1) No criminal mediation. 2) Couple separated for two months after complaint. 3) Couple is together and are building a house outside of the City.	07.02.14	Victim considers the problem <b>solved</b> . She states no further abuse.  Criminal complaint <b>open</b> and <b>investigation on-going</b> .	
V044	07.08.13 PPO	12.08.13	1) Restraining order (Civil Court). 2) Panic-button (PPO). 3) No criminal mediation. 4) Two new events occurred against her daughters after complaint.	03.10.13 OVD 18.12.13 OVD 14.02.14	Victim considers the problem <b>not solved</b> .  Criminal complaint <b>open</b> and <b>prosecutor requests trial</b> .	
V045	26.05.13 OVD	14.08.13	1) Restraining order (Civil Court). 2) Civil mediation before complaint, agreed on psychological treatment. Victim complied, accused did not. 3) Criminal mediation scheduled and parties do not attend. 4) Divorce (Civil Court). 5) Victim does not have time to follow up on criminal case.	12.02.14	Victim considers the problem <b>not solved</b> . No abuse during six months, though Victim doubts sustainability based on previous experiences.  Criminal complaint <b>filed away</b> due to lack of evidence (19.11.13).	

V046	28.02.13 OVD	30.07.13	1) Restraining order (Civil Court). 2) No criminal mediation.	23.01.14 <i>Contacted Victim, yet rejects second interview</i>	<b>Unknown</b> if problem is solved. Victim expresses that she did not want to talk about the case because it made her feel bad.  Criminal complaint <b>filed away</b> due to lack of evidence (27.09.13).  Victim considers the problem <b>solved</b> . Victim lost contact with accused and the threat that motivated the complaint was an isolated fact.  Criminal complaint <b>filed away</b> due to the nature and importance of the facts (09.10.13).
V047	14.08.13 PPO	14.08.13	1) No criminal mediation.	31.01.14	<b>Unknown</b> if problem is solved. Two complaints submitted by third parties who witnessed the violent event. Victim avoided continuing with first complaint by changing the telephone number.  Criminal complaint <b>referred</b> to federal justice system (23.10.13).
V048	10.08.13 Police Station	15.08.13	1) Restraining order (Civil Court). 2) No criminal mediation.	24.01.14 <i>Contacted Victim, yet avoids second interview</i>	Victim considers the problem <b>not solved</b> . She regrets submitting the complaint, though not much information could be taken, because she could not speak during the second interview. Victim continues living with accused and problem continues.  Criminal complaint <b>open</b> and prosecutor <b>requests mediation</b> .
V049	29.07.13 Police Station	16.08.13	1) Restraining order (Civil Court). 2) Criminal mediation scheduled, yet parties do not attend. 3) Accused threatens to take property from Victim.	21.01.14 <i>Contacted Victim, yet avoids second interview</i>	

V050	01.08.13 Police Station	16.08.13	1) Criminal mediation not scheduled. 2) Accused on probation. 3) Restraining order (PPO). 4) Trial scheduled, yet re-scheduled and restraining order prolonged. 5) Victim receives support from psychologist.	29.01.14	Victim considers the problem <b>not solved</b> . Harassment continues and <i>maybe a little bit less frequently</i> . Victim learned to live with the harassment.  Criminal complaint <b>open</b> and prosecutor <b>requests trial</b> .
V051	20.06.13 Police Station	20.08.13	1) Criminal mediation not scheduled. 2) Accused seems to be on probation, but not complying.	03.02.14	Victim considers the problem <b>partially solved</b> . The violence diminished and family is involved in advising the couple. Couple separated for two months, currently lives together, and violence persists.  Criminal complaint <b>filed away</b> due to lack of evidence (03.12.13).
V052	29.01.13 OVD	21.08.13	1) Restraining order (Civil Court). 2) Two attempts at mediation, but another threat occurred. 3) Attempt to Gesell dome. 4) Second restraining order due to new threat (Civil Court).	31.01.14	Victim considers the problem <b>not solved</b> . Visitation and child support not settled and second restraining order in place due to recent threat. Accused complies with second restraining order. Victim has another partner, continues school, and is employed.  Criminal complaint <b>open</b> and investigation on-going.
V053	08.04.13 Police Station 19.04.13 OVD	21.08.13	1) Restraining order (Civil Court). 2) Criminal mediation agreement.	29.01.14	Victim considers the problem <b>solved</b> .  Criminal complaint <b>filed away</b> with mediation agreement (02.10.13).

V054	30.11.12 Police Station	22.08.13	1) No criminal mediation. 2) Victim wants complaint to be filed away.	10.02.14	<p>Victim considers the problem <b>solved</b>. When asked what helped her to solve the problem she replies: <i>I should have not [submitted the] complaint. That is what I thought. For my kids. Because he is the father of my kids.</i> Victim said they are separated because accused moved to the province to work and only communicates through family members to send money and to speak with the children. Victim does not know where the accused lives.</p> <p>Criminal complaint <b>filed away</b> due to <b>lack</b> of evidence (09.09.13).</p>
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## **Valorization Addendum**

### **1. Social Relevance**

This study walks the reader through the legal framework relevant to explain access to justice and legal empowerment. It presents the voices of relevant actors that participate in the relation between access to justice and the process of legal empowerment. The major social contribution of this study is that it offers the opportunity to understand how people who obtain access to justice perceive their access. It is primarily a journey in the real world, giving policymakers, practitioners, and legal scholars a chance to connect law, policy, and society. Moreover, this study innovates in the application of a methodology mostly used in political science and sociology to a legal phenomenon. This application results in a unique description of the way laws, organizations, and individuals interact as a consequence of the submission of complaints.

This study is relevant for policymakers because they can read the voices of actors and receive concrete recommendations. Recommendations, even when not meant to be conclusive, intend to translate the complexities of the empirical analysis into concrete actions that can be implemented in different jurisdictions. This study is also relevant to policymakers in charge of the design of judicial systems. This study challenges the classic approach to use litigation for conflict resolution, and joins those scholars who stress the need to work with more flexible legal procedures that can incorporate the needs of the parties. Therefore, this study presents concrete and feasible alternatives that can be incorporated in the design of the judicial system to improve the chances of conflict resolution. Domestic violence is a complex problem, and this study gives tools to policymakers to improve the delivery of service based on a better understanding of how victims transit their access to justice. The empirical knowledge gained from this study is therefore relevant for further understanding on how the judicial system can assist to eliminate domestic violence.

Finally, this study is relevant for the further development of empirical legal research. The data collected for this study is socially relevant because it can contribute to answering other research questions in the field of access to justice and legal empowerment. In addition, the interview guides developed in this study and made available in the annexes can also contribute to an application of the study in other jurisdictions, allowing for systematic comparative analysis. These interview guides were developed after considering previous interview guides developed by other scholars and these also can be of further contribution.

### **2. Target Groups**

The analysis is of interest for policymakers, providers, users, and academics. This study is targeted primarily to policymakers in charge of the design of Legal Organizations. The description of legal provisions and analysis of empirical data allow policymakers to gain a deep sense of what aspects of the current system assist victims of domestic violence to use the law as a tool for empowerment. It provides insights

on how providers work within a current organizational design and legal framework, by highlighting the positive and negative elements. The information given can assist in shaping Legal Organization to ensure a delivery of service that contemplates users as their main stakeholders.

This study is also targeted to providers of legal information and advice, and to prosecutors and judges. The systematic analysis on how victims who access to Legal Organizations experience their access gives chances to tune the type of approach to the delivery of legal information and advice, and to think of new innovations within the service that can be implemented to enhance communication and participation of people. Prosecutors and judges may also find this study of interest because it offers an objective view on how people experience the service they delivered. The latter is also meant to create insights on how the delivery of services can be improved in view of the compliance with the law and the satisfaction of parties.

Additionally, this study targets scholars by bridging and connecting disciplines of law, political science, and sociology. That relation is primarily viewed in the developing and application of the theoretical framework and in the methodology used to answer the main research question.

This study is indirectly, but most relevantly, targeted to victims of domestic violence. Ultimately, the main motivation for this study is to deliver evidence that can be used to improve the delivery of justice by placing people at the centre of the research and the policy discourse. Moreover, interviews with victims of domestic violence gave them the chance to make their voices heard.

### **3. Translation of Results into Concrete Activities**

Fieldwork activities undertaken in this study have already contributed to the area of access to justice and legal empowerment. During interviews, providers and victims expressed their ideas and experiences, having the time also to reflect upon them. It was commonly experienced that interviewees appreciated the time to reflect upon the problems they dealt with daily. In addition, the Researcher had the chance to meet with different actors from different countries, from policymakers to lawyers working at different Legal Organizations. This created a good atmosphere in which to share perceptions and an enriching chain of exchange of thoughts and experiences.

This study also adds to the development of ideas to improve the delivery of legal service. The results of this study were presented at the PPO, and they were shared with key civil servants and service providers. The Researcher plans to share the results of this study with policymakers, judges, and prosecutors working at the PPO, at the Ministry of Justice, and at the relevant Legal Organizations currently assisting victims of domestic violence. It is the intention of the Researcher to pursue further communication with policymakers, hence sharing results and assisting in the improvement of access to justice in different jurisdictions.

#### 4. Advancements in the Field

The results of this study are innovative primarily due to the methodology used to answer the research questions. Empirical data is not commonly used in legal writings, and this study allows merging main fields that are independent of each other, but whose relations are not often explored: law, policy, and society. The analysis presented therefore gives elements to assist in the design of Legal Organizations to achieve their social purpose.

Moreover, the way actors were connected is also innovative. Actors participated in the process in an active way thanks to the methods used to collect data. Responsive interviewing techniques allowed for conversations where interviewees shared their accounts after receiving open-ended, non-leading questions. In this sense, interviewees also had the chance to reflect on their own situations and possibilities of action and change.

The theoretical framework developed in this study can be used to understand the relation between access to justice and legal empowerment in different areas of law and different jurisdictions. Further research can be of value to strengthen the external validity of the results of this study. Moreover, the results of this study can contribute to the development of national surveys that could be implemented by governmental or non-governmental organizations to measure to what extent access to justice legally empowers people.

This study also aims to advance understanding on how access to justice works in the region, since there were no national surveys performed to assess legal needs. Countries in other regions that have implemented national surveys were able to use their own results to shape the design of their Legal Organizations and assess policy priorities based on the empirical evidence that showed the necessities of people. Therefore, the results of this study represent a relevant contribution for the region in view of the empirical evidence provided, and the possibilities to use that evidence to develop national surveys.

Finally, the data set collected in Spanish for this study can be of value for further research to deepen on some aspects and to use other methods of assessment. Few data sets are currently available in Spanish, it should be noted. Particularly of interest for the Researcher is to deepen comprehension of what the aspects are that contribute to legal understanding.

#### 5. Application

The study will be available to policymakers, judges, and prosecutors in Argentina, providers at the PPO and OVD, and legal scholars working on access to justice and on legal empowerment worldwide. The results from the study can be used by policymakers to find and select feasible and effective alternatives to contribute to legal empowerment of those who seek access to justice. Consequently, the preliminary results of this study were presented at forums involving scholars and also at



conferences involving representatives of the judiciary and Legal Organizations.<sup>1</sup> The Researcher aims to continue with that global interaction and exposure of the results, since many findings of this study can be of value for other jurisdictions.

Moreover, the study will be available for NGOs working on legal empowerment (e.g. Namati and Open Society Foundations), and may contribute to their initiatives towards legal empowerment of vulnerable groups. International organizations working on the rights of women will also have access to the results of this study (e.g. UN Women). This study can contribute to the understanding of how the judicial system can help women victims of domestic violence. Moreover, it offers evidence from the voices of women on what barriers they normally face to obtain access to justice, and what initiatives can be of value to contribute to an equal access to justice and to the elimination of violence against women.

Corollary, the overall intention is to share lessons from this study and by doing so cooperate in the efforts made by governmental and non-governmental organizations to achieve inclusive forms of access to justice and legal empowerment.

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<sup>1</sup> *Access to Justice and Domestic Violence: Expedite and Transparent Services for Victims as Implemented in Argentina (2009-2012)*, 9th LSRC International Research Conference (2012, UK); *Legal Empowerment and Access to Justice in the Eyes of Justice Seekers: A Multijurisdictional Legal-Empirical Study*, MEPLI Talk Series (the Netherlands, 2013); *Tailor-Made Public Policies for Women Victims of Domestic Violence: An Empirical Study on Legislation and Legal Aid Offices in Argentina*, IPSA – AISP 23rd World Congress of Political Science (Canada, 2014); *Access to Legal Aid Offices that Legally Empower Vulnerable Groups: the Case of Buenos Aires, Argentina (2009-2014)*, LSE Social Justice in the Next Century (UK, 2014); *Means to Improve Access to Justice and Legally Empower Victims of Domestic Violence: An Empirical Legal Study on Legislation and Legal Aid Offices in Buenos Aires, Argentina*, 7th IACA Conference (Australia, 2014); *Prioritizing Victims and Conflict Resolution: Welcoming New Legislation in Buenos Aires, Argentina (1994-2013)*, STRAFLR Luncheon meeting (the Netherlands, 2014); *Legal Empowerment: A Theoretical Framework*, MGSOG/UNU-MERIT Research Tutorial Session (the Netherlands, 2014); *The New Argentine Civil and Commercial Code: Third-Generation Status as Reflected in Contract Law and Access to Justice Provisions* jointly with Agustín Parise, MEPLI Talk Series (the Netherlands, 2016); *Acceso a Justicia y Empoderamiento Legal: Resultados de Instancias de Investigación en OFAVyT, PPO* (Argentina, 2016); *Acceso a Justicia y Empoderamiento Legal: Las Víctimas de Violencia Doméstica en la Ciudad de Buenos Aires*, Facultad Derecho UBA (Argentina, 2016).

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## English Summary

Qualitative empirical legal research methodology is used to understand the relation between access to justice and legal empowerment (LE). The methodology contributes to unveiling the complex dynamics and discrepancies between law and perceptions, between law and society, and highlights the factors that are present in the process of LE. It furthermore helps to work on the main research question that leads this study: *How does access to justice legally empower victims of domestic violence?* The research is developed throughout five chapters and the closing statements are presented in chapter six.

Chapter 1 introduces and justifies the selection of the topic. Chapter 2 develops a novel theoretical framework to analyse the main research question. The framework is applied to three levels of analysis in subsequent chapters: legal provisions (chapter 3), legal organizations (chapter 4), and individuals (chapter 5). This novel LE framework intersects the just-mentioned three levels of analysis with four components proposed by USAID (i.e. rights enhancement, rights awareness, rights enablement, and rights enforcement).

Chapter 3 applies the LE framework to legal provisions and presents how LE is identified in them; the analysis relies on legal sources. The chapter looks at the Argentine Constitution, human rights treaties, federal laws, City (of Buenos Aires) laws, and internal regulations in the context of four guiding rights: right of women to a life free of discrimination and violence, right to access to justice, right to a remedy, and right to democratic participation. Those are overarching rights fundamental to understanding the relation between access to justice and the process of LE. Therefore, chapter 3 begins by addressing the guiding right of women to a life free of discrimination and violence in order to examine the rights directly relevant to the vulnerable group selected for this study. Next it addresses legal provisions dealing with the guiding right to access to justice, considering it as the main factor that can allow the LE process to commence. This is followed by the guiding right to a remedy, which is analysed to understand the legal options provided by legal provisions to victims to receive a legal remedy. Lastly, the guiding right to democratic participation is addressed in order to understand the legal options that victims have to voice themselves as members of society. The chapter shows how legal provisions approach the four guiding rights, observing a tendency to eliminate the historical construction of stereotypes around the relations between women and men, with a relevant influence of human rights treaties in federal and City law and in internal regulations.

Chapter 3 reveals a number of aspects, some of which are mentioned here. First, the guiding right to access to justice is treated as a comprehensive right, and recognizes other mechanisms to deliver justice and increase the involvement of different actors in the search for access to justice, though the proper inclusion of legal provisions to enhance rights awareness and comprehension of the legal procedure is still unattended. However, recent tailor-made legal provisions incorporate specific forms of campaigns oriented to the purpose of the awareness of rights. Second, alternative dispute resolution mechanisms appear in legal provisions as a better mechanism for parties to search for a resolution of their conflicts. Third, elements of the adversarial

design of legal provisions incorporated in the City contribute to increasing the participation of parties, and to involving other resources (besides legal resources) that can assist in the resolution of conflicts. Fourth, legal provisions incorporate alternative channels for democratic participation, and technology is contemplated at the federal and City levels as a tool to improve participation. Finally, procedural and administrative legal provisions gain prominence when analysing legal provisions that focus on the enforcement of rights, because they introduce a process that can lead to enforcement.

Chapter 4 covers the second level, and it therefore applies the LE framework to three groups of guiding actors at the legal organization selected for this study (i.e. the Public Prosecutor's Office of the City (PPO)). This chapter relies on empirical sources that consist of interviews conducted with the three groups of guiding actors: key civil servants, justice providers, and service providers. The sample was selected based on the experience and roles of the actors within the PPO. Key civil servants represent actors with a capacity to design policies; justice providers represent actors with a capacity to assist victims in exercising their right to a remedy; and service providers represent actors who, on a daily basis, provide a holistic assistance to victims.

Chapter 4 reveals a number of aspects, including the following, that relate to the guiding actors. With reference to key civil servants, the following is worthy of mention: (i) they base the design of the system primarily on adjusting to legal provisions, and secondarily on following personal experience and understanding of the legal needs of people; (ii) communication with organizations from other jurisdictions is highlighted as relevant to delivering better service; (iii) parties are being incorporated further into the process; and (iv) technology is being developed to become another source of rights awareness, enhancement, and enforcement, and ideas to improve rights enablement also rely on technology. With reference to justice providers (i.e. prosecutors, mediators, and judges), notice should be taken that: (i) mediators mention "parties" as protagonists in conflicts, and people and their claims are the focus of the mediators' reasoning; (ii) judges and prosecutors, even when personalizing cases, centre their reasoning in legal provisions and court decisions; (iii) judges, more than prosecutors, perceive parties as those who are helped, and they position themselves in a place of hierarchy above parties; (iv) the increase in the number of domestic violence complaints reaching the judicial system seems to shape the traditional perception of the legal procedure by justice providers and to assist in the development of new forms to enforce the rights of victims; and (v) the possibility to enforce concrete actions is nevertheless viewed by justice providers as limited in domestic violence cases, calling for a high degree of responsibility falling on the willingness of parties to change their behaviour. Lastly, with reference to service providers, mention should be made that: (i) they highlight the importance of assisting victims in a holistic way; and (ii) the coordination with other organizations is referred to as relevant to ensuring that victims receive the needed support and assistance to resolve their conflicts.

Chapter 5 applies the LE framework to individuals who accessed the legal organization analysed in chapter 4 after submitting domestic violence complaints. This

chapter relies on empirical sources that consist of interviews conducted with victims, who were interviewed twice with a six-month interval in between. Fifty-four victims compose the sample, of which 31 were interviewed twice. This chapter reveals how victims experience obtaining access to justice and generates awareness of the existing complexity of domestic violence as a legal, social, and personal problem.

Chapter 5 reveals several aspects, among which are the following. First, victims go through an empowering process before submitting complaints, and by the time of submission of complaints victims achieve a level of recognition of what they are capable of doing without the accused. Moreover, the motivation to submit complaints is rarely related to an understanding or will to enforce legal provisions, but rather to an internal process. Victims who obtain access to justice express what they want in terms of basic feelings such as happiness or tranquillity, yet not in terms of rights. Second, victims rarely start a legal action knowing the implications of the complaints, and they rarely participate in the process with informed decisions. It is rare to find victims who know their rights, and they find difficulties in learning about the legal procedure. Consequently, during the legal proceedings, victims find it difficult to participate in the decision-making. Simple options to choose from are shown to facilitate participation. Third, victims demonstrate limitations to the extent to which they can retain the information provided during meetings with organizations; follow-up calls create a feeling of reassurance in some victims. Occasionally, victims decide not to make use of referrals because they do not understand why they are being referred to different places. Fourth, victims mostly use the police station as an access point to justice, and social networks are named as one of the main resources to discover the existence of organizations and to provide support at the time of submitting complaints. However, all victims experience the transfer of information about resources to other victims and they feel sympathetic toward the experiences of other victims. The victims who continue in the legal proceedings follow directions and suggestions given by providers and lawyers. Finally, criminal complaints sometimes derive from the lack of effect of civil complaints, and they are viewed as a step that follows a civil complaint.

Chapter 6 offers a summary and reflections, recommendations, and areas of further research based on the main lessons learned in this study from the legal and empirical evidence used to understand how access to justice legally empowers victims. The main lessons are compared, when possible, with findings by previous studies. Recommendations are made with the recognition that developments in legal provisions and legal organizations can legally empower victims who obtain access to justice. Further research is encouraged to deepen the results found in this study on rights awareness as a tool to enable participation in the solution of problems.



## Dutch Summary / Nederlandse samenvatting

Om de relatie tussen de toegang tot rechtsmiddelen en juridische empowerment (JE) te begrijpen is gebruikt gemaakt van kwalitatief empirisch juridisch onderzoek. Deze benadering helpt bij het blootleggen van de complexe dynamiek en discrepanties tussen de wet en percepties, tussen de wet en de maatschappij, en bij het beschrijven van de factoren die aanwezig zijn in het proces rondom juridische empowerment. Daarnaast helpt deze benadering bij het beantwoorden van de overkoepelende onderzoeksvraag van deze studie: *Hoe kan toegang tot rechtsmiddelen helpen om slachtoffers van huiselijk geweld meer mogelijkheden te geven?* De onderzoeksvraag wordt geanalyseerd aan de hand van de zes hoofdstukken in deze studie.

In Hoofdstuk 1 wordt het onderwerp geïntroduceerd, en wordt de keuze hiervoor beargumenteerd. In Hoofdstuk 2 wordt een nieuw theoretisch raamwerk ontwikkeld voor het beantwoorden van de belangrijkste onderzoeksvraag. Het raamwerk wordt in de volgende hoofdstukken toegepast op drie analyseniveaus: wettelijke bepalingen (Hoofdstuk 3), juridische organisaties (Hoofdstuk 4), en individuen (Hoofdstuk 5). In dit nieuwe JE-raamwerk worden twee aspecten gecombineerd: de hierboven genoemde drie analyseniveaus met vier componenten, zoals voorgesteld door USAID (d.w.z. verbetering van rechten, bewustzijn van rechten, activering van rechten, en het afdwingen van rechten).

In Hoofdstuk 3 wordt het JE-raamwerk toegepast op wettelijke bepalingen, en wordt geanalyseerd hoe JE hierin kan worden geïdentificeerd; deze analyse berust met name op juridische bronnen. Het hoofdstuk behandelt de Argentijnse Grondwet, mensenrechtenverdragen, federale wetgeving, stadswetgeving (Buenos Aires), en interne regelgeving in het kader van vier leidende rechten: recht van vrouwen op een leven zonder discriminatie en geweld, recht op toegang tot rechtsmiddelen, recht op een oplossing, recht op democratische participatie. Dit zijn overkoepelende rechten die als fundamenteel worden beschouwd voor het begrijpen van de relatie tussen toegang tot rechtsmiddelen en het proces van JE. Hoofdstuk 3 behandelt daarom eerst het leidende recht van vrouwen op een leven zonder discriminatie en geweld, om te onderzoeken welke rechten direct relevant zijn voor de kwetsbare groep die voor deze studie is geselecteerd. Daarna worden er wettelijke bepalingen behandeld met betrekking tot het leidende recht op toegang tot rechtsmiddelen, dat beschouwd wordt als belangrijkste factor voor het starten van het proces van JE. Hierna wordt het leidende recht op een oplossing behandeld. Deze analyse is bedoeld voor het begrijpen van de juridische mogelijkheden die voor slachtoffers voortkomen uit juridische bepalingen ten aanzien van een juridische oplossing. Tot slot wordt het leidende recht op democratische participatie behandeld, om de juridische mogelijkheden te begrijpen die slachtoffers, als leden van de samenleving, hebben om zichzelf te laten horen. Het hoofdstuk laat zien hoe wettelijke bepalingen de vier leidende rechten benaderen, waarbij een tendens bestaat om de historische opbouw van stereotypen rond de relatie tussen mannen en vrouwen te elimineren. Mensenrechtenverdragen, federale wetgeving, stadswetgeving, en interne regelgeving blijken hier een relevante invloed op te hebben.

Uit Hoofdstuk 3 blijkt een aantal aspecten, waarvan een aantal hier wordt genoemd. Allereerst wordt het leidende recht op gerechtigheid behandeld als uitgebreid recht, waarbij andere mechanismes voor gerechtigheid worden erkend, en waarmee de betrokkenheid van verschillende partijen in de zoektocht naar rechtvaardigheid wordt vergroot. Het juiste gebruik van wettelijke bepalingen voor het verbeteren van het bewustzijn van rechten, en het begrip van juridische procedures, krijgt echter nog weinig aandacht. Op maat gemaakte wettelijke bepalingen nemen echter specifieke campagnevormen op die zijn gericht op het bewustzijn van rechten. Ten tweede komen er in juridische bepalingen steeds meer mogelijkheden voor alternatieve geschillenbeslechting, waarmee partijen toegang krijgen tot betere mechanismes voor het oplossen van hun conflicten. Ten derde dragen elementen van het hoor-en-wederhoor-ontwerp van de Stad bij aan het vergroten van de deelname van partijen, en het meenemen van andere middelen (naast rechtsmiddelen) die kunnen helpen bij het oplossen van conflicten. Ten vierde nemen wettelijke bepalingen alternatieve kanalen voor democratische participatie op, en wordt er op het federale niveau en op het Stadsniveau nagedacht over het gebruiken van technologie als instrument voor het vergroten van de participatie. Tot slot spelen procedurele en administratieve wettelijke bepalingen een steeds prominentere rol bij het analyseren van wettelijke bepalingen die zijn gericht op het handhaven van rechten, omdat hiermee een proces wordt geïntroduceerd waar deze handhaving op kan bouwen.

Hoofdstuk 4 behandelt het tweede niveau, en past het JE-raamwerk daarom toe op drie groepen met leidende partijen binnen de juridische organisatiestructuur die voor deze studie is gekozen (d.w.z. het kantoor van de Officier van Justitie van de Stad (PPO)). Dit hoofdstuk berust voornamelijk op empirische bronnen bestaande uit interviews met de drie groepen leidende partijen: belangrijke ambtenaren, wettelijke medewerkers, en dienstverleners. Deze groep werd geselecteerd op basis van de ervaring en de rollen van de partijen binnen de PPO. Belangrijke ambtenaren hebben invloed op het ontwerp van beleid; wettelijke medewerkers helpen slachtoffers bij het uitoefenen van hun recht op een oplossing; en dienstverleners helpen slachtoffers op dagelijkse basis.

Uit Hoofdstuk 4 komt een aantal aspecten naar voren met betrekking tot de leidende partijen, waaronder de volgende. Met betrekking tot de belangrijkste ambtenaren is het volgende het vermelden waard: (i) ze baseren het ontwerp van het systeem primair op aanpassingen aan wettelijke bepalingen, en secundair op hun persoonlijke ervaringen en hun begrip van de juridische behoeftes van mensen; (ii) communicatie met organisaties in andere jurisdicties wordt relevant genoemd voor het leveren van betere dienstverlening; (iii) partijen worden meer betrokken in het proces; en (iv) men is bezig met het ontwikkelen van technologie als aanvullende bron voor het bewustzijn, verbeteren, en handhaven van wetten, en ook bij ideeën over het verbeteren van de inschakeling van wetten speelt technologie een belangrijke rol. Met betrekking tot wettelijke medewerkers (d.w.z. aanklagers, bemiddelaars en rechters), dient te worden opgemerkt dat: (i) bemiddelaars “partijen” zien als de hoofdrolspelers bij conflicten, en dat mensen en hun eisen de focus zijn van de gedachtengang van de bemiddelaars; (ii) rechters en aanklagers, zelfs als zij zaken persoonlijker maken, zich in hun

redeneringen richten op wettelijke bepalingen en rechterlijke uitspraken; (iii) rechters, in grotere mate dan aanklagers, partijen zien als degenen die worden geholpen, en zichzelf hoger in hiërarchie plaatsen dan de partijen; (iv) de toename in het aantal zaken rondom huiselijk geweld dat het juridische systeem bereikt de traditionele perceptie van de juridische procedure van de wettelijke medewerkers lijkt te vormen, en lijkt bij te dragen aan de ontwikkeling van nieuwe manieren om de rechten van slachtoffers af te dwingen; en (v) de mogelijkheid om in zaken rondom huiselijk geweld concrete acties af te dwingen door wettelijke medewerkers desalniettemin wordt beschouwd als beperkt, en sterk afhankelijk van de bereidheid van de partijen om hun gedrag te veranderen. Met betrekking tot wettelijke medewerkers dient tot slot te worden opgemerkt dat: (i) zij het belang van het helpen van slachtoffers op een holistische manier benaderen; en (ii) de coördinatie met andere organisaties als relevant wordt beschouwd om ervoor te zorgen dat slachtoffers de benodigde ondersteuning en hulp krijgen voor het oplossen van hun conflicten.

Hoofdstuk 5 past het JE- raamwerk toe op individuen die na aangiftes van huiselijk geweld de in Hoofdstuk 4 geanalyseerde weg naar de rechtsgang hebben gevonden. Dit hoofdstuk berust vooral op empirische bronnen bestaande uit interviews met slachtoffers. Deze slachtoffers werden tweemaal geïnterviewd, met 6 maanden tussen de interviews. De steekproef bestond uit vierenvijftig slachtoffers, waarvan er 31 tweemaal zijn geïnterviewd. Dit hoofdstuk laat zien hoe slachtoffers hun toegang tot rechtsmiddelen ervaren, en genereert bewustzijn over de bestaande complexiteit van huiselijk geweld als juridisch, sociaal, en persoonlijk probleem.

Uit Hoofdstuk 5 komt een aantal aspecten naar voren, waaronder de volgende. Allereerst doorlopen slachtoffers een empowermentproces, voordat zij aangifte doen. Tegen de tijd dat ze aangifte doen hebben slachtoffers een niveau bereikt waarop ze weten wat ze kunnen doen, zonder te worden beschuldigd. Bovendien bestaat er zelden een verband tussen de motivatie om aangifte te doen en een begrip of wil om wettelijke bepalingen af te dwingen. Vaker gaat het om een intern proces. Slachtoffers die toegang krijgen tot rechtsmiddelen drukken hun behoeftes uit in termen van elementaire gevoelens zoals geluk of rust, maar niet in termen van rechten. Ten tweede kennen slachtoffers bij het beginnen van juridische procedures zelden de implicaties van de aangifte, en is hun deelname aan het proces zelden gebaseerd op weloverwogen beslissingen. Het overgrote deel van de slachtoffers is niet op de hoogte van hun rechten, en ondervindt problemen bij het leren over het juridische proces. Daarom vinden slachtoffers het tijdens gerechtelijke procedures vaak moeilijk om deel te nemen in de besluitvorming. Om hun deelname te bevorderen krijgen ze eenvoudige opties voorgelegd om uit te kiezen. Ten derde blijkt dat slachtoffers de informatie die zij krijgen tijdens afspraken bij organisaties slechts beperkt weten te onthouden; bij sommige slachtoffers zorgen follow-up telefoontjes voor een gevoel van geruststelling. Soms besluiten slachtoffers geen gebruik te maken van doorverwijzingen, omdat ze niet begrijpen waarom ze worden doorverwezen naar verschillende plekken. Ten vierde zien slachtoffers het politiebureau vaak als toegangspoort tot gerechtigheid, en worden sociale netwerken genoemd als één van de belangrijkste bronnen voor informatie over het bestaan van organisaties, en het bieden



van steun rondom het doen van aangifte. Alle slachtoffers ervaren echter de informatieoverdracht over middelen aan andere slachtoffers, en hebben een sympathieke houding ten aanzien van de ervaringen van andere slachtoffers. De slachtoffers die gerechtelijke procedures voortzetten volgen de aanwijzingen en suggesties van wettelijke medewerkers en advocaten. Tot slot komen strafrechtelijke zaken soms voort uit het gebrek aan resultaat van civiele zaken, en worden strafzaken gezien als een stap die volgt op een civiele aangifte.

Hoofdstuk 6 geeft een samenvatting en reflecties en aanbevelingen, en bespreekt mogelijk verder onderzoek op basis van de belangrijkste bevindingen uit deze studie, voortkomend uit het juridische en empirische bewijs dat werd gebruikt om te begrijpen hoe toegang tot rechtsmiddelen slachtoffers meer juridische mogelijkheden biedt. De belangrijkste bevindingen worden, waar mogelijk, vergeleken met bevindingen uit eerdere studies. In de aanbevelingen wordt erkend dat ontwikkelingen ten aanzien van wettelijke bepalingen en juridische organisaties slachtoffers meer mogelijkheden kan bieden bij de toegang tot rechtsmiddelen. Verder onderzoek wordt vooral aangemoedigd ter verdieping van de resultaten uit deze studie ten aanzien van het bewustzijn van rechten als instrument om het deelnemen aan het oplossen van problemen mogelijk te maken.

## Spanish Summary / Resumen en español

La metodología de investigación jurídica empírica-cualitativa se utiliza para comprender la relación entre el acceso a la justicia y el empoderamiento legal en situaciones de vulneración de derechos (EL). La metodología utilizada aporta a develar la compleja dinámica y las discrepancias entre la ley y su percepción, entre la ley y la sociedad, y permite resaltar los factores que están presentes en el proceso de EL. Se utiliza también para analizar la pregunta de investigación que guía este estudio: *De qué manera el acceso a la justicia empodera legalmente a las víctimas de violencia doméstica*. La investigación se desarrolla en el curso de cinco capítulos y presenta conclusiones en el último capítulo.

El capítulo 1 introduce y justifica la selección del tema. El capítulo 2 desarrolla un marco teórico novedoso que se utiliza para el análisis de la pregunta de investigación. Este marco teórico se aplica en los siguientes capítulos a tres niveles de análisis: disposiciones legales (capítulo 3), organizaciones legales (capítulo 4) e individuos (capítulo 5). Este novedoso marco teórico de EL entrecruza los tres niveles de análisis mencionados con los componentes propuestos por United States Agency for International Development, USAID (es decir, avances en los derechos, conocimiento de los derechos, la posibilidad de accionar los derechos, y la ejecución de los derechos).

El capítulo 3 aplica el marco teórico de EL a las disposiciones legales y presenta cómo se identifica el EL en las mismas. El análisis se sustenta en fuentes jurídicas. El capítulo se centra en la Constitución Nacional de la República Argentina, los tratados de derechos humanos, las leyes federales, las leyes de la Ciudad Autónoma de Buenos Aires (la Ciudad), y los reglamentos internos del Ministerio Público de la Ciudad de Buenos Aires (PPO), focalizándose en cuatro derechos rectores: derecho de las mujeres a una vida libre de discriminación y violencia, derecho a acceder a la justicia, derecho a obtener un remedio, y derecho a la participación democrática. Estos derechos rectores son fundamentales para comprender la relación entre el acceso a la justicia y el proceso de EL. De esta forma, el capítulo 3 aborda el derecho de las mujeres a una vida libre de discriminación y violencia con el fin de examinar los derechos que son relevantes para el grupo vulnerable seleccionado en este estudio. A continuación se estudian las disposiciones legales relativas al derecho a acceder a la justicia, considerándolo el principal factor que permite que comience el proceso de EL. Este derecho es seguido por el derecho a obtener un remedio (resolución del conflicto), el cual es analizado para entender las opciones legales que tienen las víctimas para recibir un remedio legal. Por último, se estudia el derecho a la participación democrática con el fin de entender las opciones legales que tienen las víctimas de expresarse como miembros de la sociedad. El capítulo muestra cómo las disposiciones legales contemplan los cuatro derechos rectores mencionados, observando una tendencia a eliminar la histórica construcción de estereotipos en torno a las relaciones entre mujeres y hombres, con una considerable influencia de los tratados de derechos humanos en las leyes federales, las leyes de la Ciudad, y los reglamentos internos del PPO.

El capítulo 3 revela una serie de aspectos, algunos de los cuales se mencionan aquí. En primer lugar, el derecho a acceder a la justicia es tratado como un derecho integral, reconociendo asimismo otros mecanismos de acceso a la justicia, aumentando la participación de los diferentes actores en la búsqueda del mismo. Sin embargo, con la excepción de algunas mediadas incorporadas en leyes específicas, como lo es la ley 26485 sancionada en el 2009,<sup>1</sup> se observan limitadas inclusiones de disposiciones legales focalizadas a aumentar el conocimiento del derecho por la gente y su comprensión de los procesos judiciales. En segundo lugar, los mecanismos alternativos de resolución de conflictos aparecen en las disposiciones legales como una opción que contribuye a que las partes resuelvan sus conflictos. En tercer lugar, los elementos del sistema acusatorio adversarial introducidos en el marco normativo de la Ciudad contribuyen a aumentar la participación de las partes, y presentan alternativas (además de recursos legales) que favorecen la resolución de conflictos. En cuarto lugar, las disposiciones legales incorporan canales alternativos para la participación democrática, y la tecnología se introduce a nivel federal y de la Ciudad como una importante herramienta para mejorar la participación. Por último, al analizar las disposiciones legales que se centran en la ejecución de los derechos, las disposiciones procesales ganan prominencia ya que son ellas las que presentan un proceso que puede conducir a la ejecución de los derechos.

El capítulo 4 cubre el segundo nivel, y aplica el marco de EL a tres grupos de actores que actúan dentro de la organización legal elegida para este estudio (es decir, el PPO). Este capítulo se sustenta en fuentes empíricas que consisten de entrevistas realizadas con tres grupos de actores: funcionarios públicos, proveedores de justicia y proveedores de servicios. La muestra fue seleccionada en base a los roles de los actores dentro del PPO. Los funcionarios públicos representan aquellos actores que tienen capacidad de diseñar políticas internas dentro del PPO; los proveedores de justicia representan actores con capacidad para ayudar a las víctimas en el ejercicio y ejecución de sus derechos; y los proveedores de servicios representan a actores que otorgan a las víctimas asistencia holística en forma diaria.

El capítulo 4 revela una serie de aspectos, incluyendo los siguientes, que se refieren a los tres grupos de actores. Con referencia a los funcionarios públicos, vale resaltar los siguientes: (i) los funcionarios públicos basan el diseño del sistema organizacional primero en las disposiciones legales, y luego en sus experiencia profesionales y en el entendimiento de las necesidades legales de las personas; (ii) se resalta la necesidad de una comunicación con organizaciones de otras jurisdicciones para otorgar un mejor servicio; (iii) se busca que las partes en conflicto sean incorporadas en el proceso; y (iv) la tecnología se desarrolla para convertirse en otra fuente para promocionar el conocimiento de los derechos, y para mejorar las posibilidades de las personas de accionar y ejercer derechos. Con referencia a los proveedores de justicia (es decir, los fiscales, los mediadores, y los jueces), cabe destacar que: (i) los mediadores mencionan a las “partes” como protagonistas de los conflictos, y centran sus respuestas en la gente y sus demandas; (ii) los jueces y fiscales, aun cuando personifican a los casos,

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<sup>1</sup> La ley menciona formas específicas de campañas masivas orientadas a la difusión de los derechos.

centran sus respuestas en las disposiciones legales y las decisiones de los tribunales; (iii) los jueces, en mayor medida que los fiscales, perciben a las partes como aquellos que son ayudados, y se posicionan en un lugar de jerarquía; (iv) el aumento de las demandas de violencia doméstica hace que los proveedores de justicia tengan que cuestionar la forma tradicional de los procedimientos judiciales y contribuye al desarrollo de nuevas formas procesales para hacer cumplir los derechos de las víctimas; y (v) los proveedores de justicia ven limitadas sus posibilidades de ejecutar medidas en casos de violencia doméstica, haciendo que las partes tengan que asumir la responsabilidad de cambiar su comportamiento. Por último, con referencia a los proveedores de servicios, cabe destacar que: (i) se resalta la importancia de ayudar a las víctimas de una manera holística; y (ii) se menciona como relevante la coordinación con otras organizaciones para asegurar que las víctimas reciban el apoyo y la asistencia necesaria para resolver sus conflictos.

El capítulo 5 aplica el marco teórico de EL a los individuos que accedieron a la organización legal analizada en el capítulo 4 luego de haber presentado una denuncia por violencia doméstica. Este capítulo se sustenta en fuentes empíricas que consisten de entrevistas realizadas a las víctimas que denunciaron. La muestra está compuesta de cincuenta y cuatro víctimas, de los cuales treinta y una fueron entrevistadas dos veces. Este capítulo revela la experiencia de las víctimas en su acceso a la justicia y genera conciencia sobre la complejidad que yace en los casos de violencia doméstica la cual excede el ámbito legal, abarcando también el ámbito social y personal.

El capítulo 5 revela varios aspectos, entre los cuales se encuentran los siguientes. En primer lugar, las víctimas atraviesan un proceso de empoderamiento antes de presentar una denuncia, y al momento de la presentación de la denuncia reconocen que son capaces de accionar sin el acusado. Por otra parte, la motivación para presentar denuncias se asocia a un proceso interno, y rara vez se asocia a un entendimiento de o a la voluntad para hacer cumplir las disposiciones legales. Las víctimas que acceden a la justicia expresan sus deseos en términos de sentimientos primarios como lo son la felicidad y la tranquilidad, y no lo hacen en términos de derechos. En segundo lugar, las víctimas rara vez inician una acción legal conociendo las implicancias de las denuncias, y rara vez participan en el proceso judicial con una decisión informada. Es también raro encontrar víctimas que conozcan sus derechos, y la mayoría encuentran dificultades en entender el procedimiento legal. En consecuencia, durante el proceso judicial, las víctimas tienen dificultades para participar en la toma de decisiones. Sin embargo, la participación de las víctimas pareciera aumentar cuando se les da opciones simples de las cuales pueden elegir. En tercer lugar, las víctimas demuestran limitaciones en la medida en que pueden retener la información proporcionada durante las reuniones en las organizaciones; y los llamados de seguimiento crean una sensación de tranquilidad en algunas víctimas. En ocasiones, las víctimas deciden no hacer uso de los lugares a donde son derivadas, ya que no entienden por qué se las está derivando a esos lugares. En cuarto lugar, la mayoría de las víctimas utilizan la policía como el primer punto de acceso a la justicia, y las redes sociales son mencionadas como el principal recurso de donde las víctimas conocen sobre la existencia de las distintas organizaciones y como un sostén

importante al momento de presentar la denuncia. A su vez, todas las víctimas mencionan haber experimentado la situación de informarle a otras víctimas que aún no han denunciado sobre los lugares donde pueden pedir ayuda y se observa simpatía hacia las experiencias de otras víctimas. Las víctimas que continúan en el proceso judicial siguen las instrucciones y sugerencias dadas por los representantes de distintas organizaciones y/o de sus abogados. Por último, las denuncias penales a veces derivan de la falta de efecto de denuncias civiles, y en estos casos son vistas como la instancia que le sigue a la denuncia civil.

El capítulo 6 ofrece un resumen y reflexiones, recomendaciones, y áreas de investigación futura sobre las lecciones que devienen de la evidencia legal y empírica utilizada para comprender cómo el acceso a la justicia brinda a las víctimas empoderamiento legal. Las principales lecciones son comparadas, cuando es posible, con resultados de estudios anteriores. El capítulo presenta recomendaciones reconociendo que los avances en las disposiciones y las organizaciones legales contribuyen a brindar empoderamiento legal de aquellas víctimas que obtienen acceso a la justicia. Principalmente, este estudio abre las puertas a investigaciones futuras que a partir de los resultados presentados ahonden en el tema de conocimiento de derechos como una herramienta fundamental para la participación de las partes en la resolución de sus conflictos.

## **Curriculum Vitae**

Julieta Marotta (Argentina, 1981) holds an LLB degree from the University of Buenos Aires (Argentina) and an LLM degree from Louisiana State University (US). Julieta is admitted to practise law in Argentina and has worked for law firms in Argentina and the US; since recently she is a certified mediator by Tulane University (US) and Humboldt University (Germany). Julieta worked as coordinator for the Louisiana Civil Justice Center (US), was visiting scholar at the Institute for Foundation Law and the Law of Non-Profit Organizations at Bucerius Law School (Germany), and was an intern at UNESCO, Institute for Lifelong Learning.

Julieta joined the PhD programme at Maastricht University/United Nations University (MGSoG/UNU-MERIT) in 2011 to develop her research interest in inclusive forms of access to justice and legal empowerment. While at Maastricht, Julieta tutored, lectured, and coordinated courses for the Master Public Policy and Human Development programme (MPP) at MGSoG/UNU-MERIT, for the Faculty of Arts and Social Sciences, for the Faculty of Law, and for the Maastricht School of Management on topics related to public policy, multilevel governance, and qualitative methods. In addition, Julieta worked as academic advisor for University Colleague Maastricht and as coach for the Premium project at Maastricht University. Julieta joined the MPP programme as deputy academic programme director in September 2016; she continues there today with her teaching and research activities.



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